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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. APHIS–2006–0167]

APHIS Policy on Responding to the Low-Level Presence of Regulated Genetically Engineered Plant Materials

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of policy statement.

SUMMARY: This notice describes the Animal and Plant Health Inspection Service's (APHIS) policy for responding to low-levels of regulated genetically engineered plant materials which may occur in commercial seeds or grain. This notice is intended to provide clarification for the public and developers of genetically engineered plants on APHIS' response to such situations. The policy statement does not confer any rights upon or create any rights for any person and does not operate to bind APHIS or the public, nor does it address how other Federal agencies might respond to such situations.

ADDRESSES: Copies of the policy statement are available on the Internet at *http://www.aphis.usda.gov/biotechnology/current_initiatives.shtml*. Copies may also be obtained by contacting Dr. John Turner, Director, Policy Division, BRS, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1238; (301) 734–8365.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Policy Division, BRS, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1238; (301) 734–8365.

SUPPLEMENTARY INFORMATION:

Background

APHIS works to protect America's agriculture and environment using a science-based regulatory framework that allows for the safe development and use of genetically engineered (GE) plants. Under the authority of the Plant Protection Act [1] (PPA), APHIS regulates the introduction (importation, interstate movement, and field release) of GE organisms in order to prevent direct or indirect risks to plant health and the environment.

Genetic engineering is a method used to introduce new traits into plants by moving genes from one or more organism(s) into a second organism. GE plants that can tolerate herbicides, resist insects or viruses, or enhance nutrition and provide other health or environmental benefits are examples of crops currently being grown and tested.

Plant breeding may occasionally result in low-level mixing of genes and gene products from unintended plant sources. This is true for both conventionally bred plants as well as biotechnology-derived plants. These occurrences can result from natural processes such as the movement of seeds or pollen, or human-mediated processes associated with field testing, plant breeding, or seed production. The mixing of low levels of GE plant materials may result in unauthorized introductions of regulated materials in, for example, commercial seeds and grain. The potential for these occurrences may increase with the expansion of GE crop research, development, and use. This document is intended to describe how APHIS protects agriculture and the environment by responding to situations involving a low-level mixing with commercial seeds and grains of genes and gene products from GE plants subject to regulation by APHIS under 7 CFR part 340.

Overview of the APHIS Regulatory System for GE Plants

A developer wishing to introduce a new GE plant must obtain APHIS' authorization before proceeding. Depending on the nature of the GE plant, the developer files either a notification or a permit application with APHIS. With either process, the developer must adhere to APHIS regulations and requirements to ensure, through appropriate measures, confinement of the regulated material. An applicant must submit required information on the movement, importation, or field release, which APHIS scientists review to determine whether to authorize the applicant's request. To ensure compliance with the permit or notification conditions, APHIS performs targeted inspections and audits of field tests using the relative risk of each type of trial to determine the frequency and number of inspections performed. For example, for sites where developers are cultivating GE plants engineered to produce pharmaceutical and industrial proteins, APHIS generally inspects seven times throughout field testing, including before, during, and after the field trial. APHIS also maintains oversight of the movement of regulated plants to and from field trial locations. Regulated plants must be transported according to the regulations and as described in the permit. The methods of transport are subject to verification by inspectors at the receiving facility. This permitting and notification system is designed to restrict introductions of GE plants and plant materials as long as they are regulated by the Agency.

Permits are generally more restrictive than notifications and are used for any type of GE plant that may pose an elevated risk to plant health or the environment or for which APHIS has less regulatory experience and familiarity, such as plants engineered to produce pharmaceutical or industrial compounds. In addition to detailed information on the biological properties of the GE plant, the permit applicant also must provide detailed descriptions of how field tests will be performed, including specific measures for ensuring confinement and reducing any potential risk that may be associated with the GE plant. Using this information, APHIS scientists create a set of permit conditions that applicants must meet when conducting approved field trials or transporting the GE plants.

Most GE plants qualify for, and are field tested under, the notification process. The notification process is used only for plants and traits with which APHIS has a great deal of regulatory experience and familiarity and that do not pose an elevated risk for plant

[1] The Plant Protection Act is found at 7 U.S.C. 7701 *et seq.* APHIS' biotechnology regulations are found at 7 CFR part 340.

health or the environment. To qualify for the notification process, a plant or trait must meet six safety-related eligibility criteria that center on the plant's potential to pose a risk to plant health or the environment. To ensure confinement, the developer must perform the field test in a way that meets performance standards that are specified in APHIS' regulations.[2] If a GE plant does not meet the criteria for notification, the applicant must follow the permitting process.

After a GE plant has been field-tested extensively and the developer can show that the GE plant does not pose a plant pest risk, the developer may file a petition for deregulation. The developer must submit extensive information about the plant's biology and field test results. After conducting an environmental assessment (EA) or an environmental impact statement (EIS) and seeking public comment, APHIS may approve a petition for deregulation if it reaches the conclusion that the GE plant does not pose a plant pest risk.[3] Alternatively, an extension process can be used in cases where the GE plant is similar to a previously deregulated plant. The extension process, which was established in 1997 and has been used numerous times since, is based on the premise that a GE plant that is similar to a previously deregulated plant with respect to plant genotype and the expressed protein(s) is also similar in terms of any potential risk. Based on a thorough review of information in the extension request, which includes data showing similarity, APHIS may conclude that the new GE plant, like the previously deregulated GE plant, does not pose a plant pest risk and therefore will no longer be regulated.[4]

APHIS' Future Biotechnology Regulations

APHIS continually evaluates its policies and regulations and makes changes as necessary as the complexity and scope of biotechnology continue to grow. One of the key changes has been the strengthening of the requirements for the field testing of certain GE plants. As announced in a notice in the **Federal Register** on January 23, 2004 (Docket No. 03–031–2; 69 FR 3271–3272) and in a January 2004 USDA press release,[5] APHIS is preparing a draft EIS to evaluate the current regulatory system and analyze several possible changes in order to keep pace with science and to more fully utilize the authority provided by the PPA. APHIS will solicit public comments on the possible changes analyzed in the draft EIS. In any event, APHIS will continue to regulate each GE plant in a manner that is proportionate to the risks associated with that GE plant.

Interagency Coordination on Low Level Presence

APHIS works in concert with the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) to provide regulatory oversight of the development of GE organisms, consistent with the Coordinated Framework for Regulation of Biotechnology[6], adopted in 1986. The Coordinated Framework is a comprehensive Federal regulatory policy for ensuring the safety of biotechnology research and products. APHIS is responsible for protecting agriculture and the environment. FDA has primary responsibility for ensuring the safety of food (including food for animals). EPA regulates pesticides to ensure they can be used without unreasonable adverse effects on the environment, and to ensure public safety from the use of pesticides, including the residue of pesticides on food and animal feed.

The biological conditions of plant breeding, whether with conventional or GE plants, are such that there is a potential for low levels of genes and gene products to occasionally move beyond confined research sites into commercial seeds and grain that enter commerce. Recognizing this fact, the Federal Government, in an August 2002 notice in the **Federal Register**,[7] proposed measures aimed at strengthening the controls for preventing low levels of regulated materials from GE plants from entering commerce until appropriate safety standards have been met. The proposed actions to be taken by the three agencies were based on three fundamental principles:

- The level of confinement for a field test must be consistent with the level of risk associated with the introduced protein or trait;
- Field test confinement measures must be rigorous to restrict the low-level occurrence in commerce for those traits or proteins that present an unacceptable or unknown risk; and
- Regardless of risk, field test requirements should minimize out-crossing and commingling of seed.

Since the 2002 notice, FDA issued guidance for industry on early food safety assessments of new nonpesticidal proteins produced by new plant varieties intended for food use,[8] and EPA clarified its guidance for field testing of plant-incorporated protectants (pesticides intended to be produced and used in a living plant).[9] APHIS strengthened its field testing requirements for plants producing pharmaceutical or industrial compounds to ensure that regulated material from these plants is not found, even at low levels, in commerce. In addition, as discussed above, APHIS has initiated a process to amend its biotechnology regulations under 7 CFR part 340. As part of that process, the Agency will consider establishing new criteria to determine whether low levels of regulated materials would be acceptable in commercial seeds and grain based on risks to plant health, public health and the environment.

Through practical experience, APHIS has developed a policy based on current regulations for responding to the low-level presence of regulated materials in commercial seeds and grain. This policy provides the foundation for Agency actions in these cases. For purposes of transparency, this policy is set forth below for the public.

APHIS Policy on Responding to the Low-Level Presence of Regulated GE Plant Materials

APHIS requirements for both permits and notifications minimize the likelihood that regulated GE plant materials will occur in commercial seeds and grain. APHIS' policy is to respond to occurrences of regulated materials in commercial seeds and grain with remedial action that is appropriate to the level of risk and warranted by the facts in each case. In every such case, APHIS will initiate an inquiry to determine the circumstances surrounding the release, evaluate the risk attendant to the release, and determine what regulatory actions,

[2] Performance standards are found at 7 CFR 340.3(c).

[3] Deregulation requirements are found at 7 CFR 340.6.

[4] Regulatory authority to conduct extension requests is found at 7 CFR 340.6(e).

[5] USDA Press Release, ''USDA Announces First Steps to Update Biotechnology Regulations,'' January 22, 2004.

[6] Coordinated Framework for Regulation of Biotechnology, 51 FR 23302, June 26, 1986.

[7] Proposed Federal Actions To Update Field Test Requirements for Biotechnology Derived Plants and To Establish Early Food Safety Assessments for New Proteins Produced by Such Plants, 67 FR 50578, August 2, 2002.

[8] FDA issued its guidance in June 2006, which can be found at *http://www.cfsan.fda.gov/~dms/bioprgu2.html#ftn7*.

[9] EPA released its draft guidance on September 29, 2006, which can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2006/September/Day-29/p16072.htm*.

including remedial and enforcement actions, are required.

If APHIS determines that action is not necessary to mitigate low-level presence of a regulated material in commerce to protect plant health or the environment, this determination does not preclude enforcement action against a company or individual for violation of APHIS regulations. APHIS will investigate and take appropriate enforcement action whenever regulated materials are detected in commerce.

APHIS coordinates closely with EPA and FDA on investigations, risk evaluations, and the determination of what remediation measures, if any, will be necessary. This cooperation is crucial and helps to ensure that there are no unresolved safety issues. Any regulatory action taken by APHIS will not preclude FDA or EPA from pursuing action under their own authorities, as necessary, to ensure the safety of food as well as to protect human health and the environment from the sale, distribution, or use of any pesticide.

APHIS has authority under the PPA to take or order remedial measures which include the authority to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated materials if it is determined that such measures are necessary to prevent the dissemination of a plant pest within or throughout the United States.[10] Any remedial action taken would be determined on a case-by-case basis. Key considerations include the extent of the occurrence, the nature of the regulated material, as well as any potential risks to plant health or the environment. In any case where APHIS determines that an incident involving a GE plant would result in the introduction or dissemination of material that could pose a threat to plant health or the environment, remediation measures will be required. It is important to note that, due to the strict requirements that APHIS has developed in recent years for GE plants that pose elevated risks, such occurrences would be unlikely.

There are two principal situations in which APHIS may determine that action under the PPA was not necessary. Even though remedial measures would not generally be applied in these two situations, applicants field testing these types of plants must be authorized through either notifications or permits and must follow all APHIS requirements.

The first situation would be when the regulated material is derived from plants that meet all of the criteria to qualify for APHIS' notification process. The six eligibility requirements are:[11]

- The plant must not be listed on the Federal Noxious Weed list or be considered a weed in the area of proposed release.
- The introduced genetic material must be stably integrated, which means the introduced DNA must remain inside the living cell and replicate only with the plant DNA.
- The function of the introduced genetic material is known, and its presence in the regulated article does not result in a plant disease.
- The introduced genetic material does not cause the production of an infectious entity, produce substances that are known to be, or are likely to be, toxic to nontarget organisms, or produce products intended for pharmaceutical or industrial use.
- The introduced genetic sequences derived from plant viruses do not pose a significant risk of creating a new plant virus.
- The plant has not been modified to contain certain genetic material derived from animal or human pathogens. In addition, plants containing coding sequences whose products are known agents of diseases in humans or nontarget animals are not eligible.

The majority of GE plants field tested under APHIS regulations qualify for the notification process because they present minimal risk to plant health and the environment. Many of the plants that have been engineered for common traits such as pest resistance, herbicide tolerance, male sterility, and improved product quality such as delayed fruit ripening meet the criteria for notification. APHIS has extensive experience with these types of plants and has overseen thousands of field tests involving them.

The second situation in which APHIS may not take remedial action is if the GE plant is similar to another GE plant that has already been deregulated by APHIS with respect to both plant genotype and any novel protein(s) expressed. APHIS will carefully assess the GE plant material, including the plant genotype, the introduced genes, and any proteins produced. When these are sufficiently similar to those of a previously deregulated plant, APHIS is able to conclude confidently that, like the previously deregulated plant, the new GE plant poses no significant safety risk to plant health or the environment, and thus, remedial action may not be necessary.

[10] See 7 U.S.C. 7714; 7 CFR 340.0(b).

[11] The specific criteria for GE crops planted under notification are found at 7 CFR 340.3.

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 26th day of March 2007.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 07–1536 Filed 3–27–07; 2:00 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AMS–FV–06–0174; FV06–929–1 FR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Cranberry Marketing Committee (Committee) for the 2006–2007 fiscal year and subsequent fiscal years from $0.18 to $0.28 per barrel. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Committee locally administers the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The fiscal year began September 1, 2006, and ends August 31, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* This rule becomes effective March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@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: This final rule is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries produced in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established for the 2006–2007 and subsequent fiscal years from $0.18 to $0.28 per barrel of cranberries.

The proposed rule inadvertently referred to the proposed increase as a ''per pound'' increase rather than a ''per barrel'' increase two times in the **SUPPLEMENTARY INFORMATION** section. The proposed regulatory text was correct in the proposed rule. The inadvertent errors are corrected in this document.

The cranberry marketing order provides authority for the Committee, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 929.41 of the order. In addition, § 929.45 of the order provides that the Committee, with the approval of the USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects is paid from funds collected pursuant to § 929.41 (Assessments), or from such other funds as approved by the USDA.

For the 2001–2002 fiscal year, the Committee recommended, and USDA approved, an assessment rate of $0.18 per barrel of cranberries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 28, 2006, and recommended 2006–2007 expenditures of $3,522,062 and an assessment rate of $0.28 per barrel of cranberries. The Committee passed the assessment rate increase by a vote of 12 to 2. Those not supporting the recommendation wanted a lesser increase. In comparison, last year's budgeted expenses were $2,612,265. The assessment rate of $0.28 is $0.10 higher than the rate currently in effect.

The Committee recommended the $0.10 per barrel increase to cover increased costs. The Committee has expanded its contributions to the export market development program from $50,000 in 1999 to $480,000 in 2006. The Committee has increased funding of the export market development program as target markets have expanded from two in 1999 (Japan and Germany), to five in 2006 (Japan, Germany, Mexico, France and Australia) with contingency plans to expand activities regionally within Europe and in South Korea. According to the Committee, cranberries and cranberry products going into export markets have steadily increased from 10 percent of the annual cranberry production during the 1999–2000 fiscal period to approximately 24 percent of the annual production in the 2005–2006 fiscal period.

In order to expand and maintain activities within the target markets, the Committee has used funds from its reserve account to meet the costs of educating consumers and the trade industry.

Since the last increase published in the **Federal Register** on February 14, 2002, at 67 FR 6843, the assessment rate has not been increased to compensate for increases in the costs of goods and services, costs contributable to increasing the Committee membership and to pay back funds taken from the reserve for the expanding export market development program. As a result, the reserve has continued to decrease until it is at a point where the Committee is unable to meet the order's reserve funding requirements or balance its budget without an increase in assessments and/or cutback in program activities. The Committee recommended the assessment rate increase to continue to expand the generic export market development program and have sufficient funding to meet its operational expenses. Without this increase, the Committee would have to curtail expansion of the export market development and promotion program.

All cranberry handlers regulated under the marketing order will pay the proposed assessment rate. However, certain organic handlers may be exempt from paying assessments for market promotion activities pursuant to 7 CFR 900.700.

The major expenditures recommended by the Committee for the 2006–2007 fiscal year include $500,000 for domestic promotion, $480,000 for export promotion, $154,116 for personnel, $103,500 for meetings, and $107,527 for administrative expenses. Budgeted expenses for major items in 2005–2006 were $488,225 for domestic promotion, $147,420 for personnel, $105,500 for meetings, and $116,542 for administrative expenses. The Committee recommended an increased assessment rate to generate larger revenue to meet its operational and export promotion expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Committee determined assessable cranberry production for the upcoming fiscal period at 6,506,000 barrels. Therefore, total assessment income for the 2006–2007 fiscal year is estimated at $1,821,680 (6,506,000 barrels x $0.28). This amount plus $1,767,600 from USDA's Foreign Agricultural Service's Market Access Program (MAP) and adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $541,122) will be kept within the approximately one fiscal period's expenses as recommended by the Committee consistent with § 929.42(a) of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although the assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of cranberries who are subject to regulation under the cranberry marketing order and approximately 1250 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The majority of producers and handlers of cranberries under the order are considered small entities under SBA's standards.

The principal demand for cranberries is in the form of processed products. Cranberries are dried, frozen, canned, and juiced. During the 2001–2002 fiscal year through the 2005–2006 fiscal year, approximately 91 percent of the U.S. cranberry crop, or 5.4 million barrels, was processed annually.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to cranberry production has leveled off over the last several crop years. Bearing acres have declined slightly from a high of 39,600 acres in the 2003–2004 fiscal year to 39,100 in the 2005–2006 fiscal year. Wisconsin and Massachusetts lead the nation in cranberry acreage, with approximately 81 percent of the total, and production also at approximately 81 percent of the total U.S. cranberry crop each year.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2006–2007 fiscal period and subsequent periods from $0.18 to $0.28 per barrel of cranberries.

The Committee discussed continuing the existing assessment rate, but concluded that it needed the additional funds to devote to its export market development and promotion program and replenish its financial reserve which would be funded through assessments.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule will impose no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

As mentioned previously, a proposed rule was published in the **Federal Register** on January 16, 2007 (72 FR 1678). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and handlers. Finally, the proposed rule was made available through the Internet, USDA and the Office of the Federal Register. A 30-day comment period ending February 15, 2007, was provided to allow interested persons to respond to the proposal. Four comments were received. One supported and three opposed the proposal.

The commenter in support for the assessment rate increase stated that the increase is needed to help fund the Committee's operations and to help increase consumer awareness of cranberries.

Three comments were received (two from growers and one from a grower-handler) in opposition to the proposed assessment rate increase. One of the commenters opposed the proposal because he did not believe a $.10 per barrel increase in the assessment rate will have a meaningful increase on the demand for cranberries. The commenter also stated that it is inequitable to force U.S. growers to spend another $.10 per barrel while growers in Canada and Chile pay nothing. Finally, this commenter stated that it is impossible to justify an increase in the assessment rate for advertising when cranberry supply and demand are projected to be in balance. Another commenter opposed the proposal based on his contention that he already spends a sum of money on branded advertising with a major cranberry cooperative. The last

commenter felt that the assessment rate increase was an excessive and unjustified expense.

In response to these comments, the $.10 per barrel increase is not specifically for export promotional activities but to provide the Committee with funds for its operational expenses. As previously stated, the assessment rate has not been increased since 2002. Since that time, there have been increases in the costs of goods and services, costs contributable to increasing Committee membership and to pay back funds taken from the reserve for the export market development program. The increase in the assessment rate is needed to generate larger revenue for the Committee to meet its expenses and keep its reserves at an acceptable level. Without the increase, the Committee will have to curtail its operational expenses including the export market development and promotion program that has[K1] been funded by assessments and MAP funds for the past several years.

With regard to the equitability of some handlers paying the increased assessment rate while others pay no assessments, all cranberry handlers regulated under the marketing order will have to pay the increased assessment rate. Certain organic handlers are exempt from paying assessments on market promotion activities. However, handlers not regulated under the marketing order (such as those handlers in Canada or Chile) are not subject to its provisions and thus, do not have to pay assessments.

Lastly, in regards to the commenter who already pays for branded advertising, we note that those advertisements promote a specific brand of cranberries and cranberry products. The Committee's domestic and export promotion programs are generic and were developed to promote the qualities of cranberries and cranberry products for the entire cranberry industry. Both the generic and branded promotion of cranberries and cranberry products reach new markets/customers and increase demand for cranberries. Under the marketing order, the assessment obligation is imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, we believe that these costs are offset by the benefits derived by the operation of the marketing order.

Accordingly, no changes will be made to this rule based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–2007 fiscal period began September 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

On and after September 1, 2006, an assessment rate of $.28 per barrel is established for cranberries.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5791 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. AMS–FV–06–0181; FV06–948–2 FIR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule modifying the grade and maturity requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule continues in effect the action that relaxed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all Area No. 2 potato varieties, other than round, red-skinned varieties, measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1¾-inch maximum diameter. This rule also continues in effect the action that changed the date minimum maturity requirements are implemented from August 25 to August 1 of each year. These changes are intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

DATES: *Effective Date:* April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@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: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948,

both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule adopts the interim rule that changed the minimum grade requirement for certain potatoes handled under the order and also changed the minimum maturity requirement implementation date. Specifically, this regulating action changed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all varieties of Area No. 2 potatoes, other than round, red-skinned potatoes, measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. Furthermore, the implementation date for the minimum maturity requirement was changed from August 25 to August 1 of each year. These changes were recommended by the Committee at a meeting held on August 10, 2006.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 authorizes an area committee to recommend to the Secretary modifications, suspension, or termination of regulations issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope and consisting of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata Counties, and all counties west thereof; Area 2, commonly known as San Luis Valley, consists of Sanguache, Huerfano, Las Animas, Mineral, Archuleta Counties, and all counties south thereof; and, Area 3, which consists of the remaining counties in the State of Colorado not included in Area 1 or 2. The order currently regulates the handling of potatoes in Areas 2 and 3 only; regulation for Area 1 is currently not active. Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order.

For many years, consumer demand for small fresh market potatoes was relatively soft in comparison to demand for larger size potatoes. Size B and smaller potatoes were often discarded or fed to livestock. Grade and size regulations were developed to keep lower quality small potatoes out of the fresh market. At that time, the Committee believed that small potatoes, sold at a great discount, eroded the price for large potatoes. By requiring small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse affect on the market for larger potatoes.

Recently, however, demand has increased for small potatoes, which often command premium prices compared to larger size A potatoes (1⅞-inch and larger). With the growing demand for small potatoes, producers and handlers are concerned that they will not be able to supply this market if only U.S. No. 1 or better grade can be shipped under the order. The Colorado Area No. 2 potato industry has received requests from customers for additional small potatoes that grade U.S. Commercial or better. This action assists Area No. 2 handlers in meeting their buyers' needs.

Committee statistics show that approximately 62 percent of the entire potato crop in Area No. 2 grades U.S. No. 1 or better. However, the percentage of Size B and smaller potatoes meeting U.S. No. 1 grade is only about 50 percent. The reason for the lower percentage of smaller potatoes is that potato defects are scored based on the percentage of surface area affected on the individual potato. Because Size B and smaller potatoes have less surface area, any defect inspected comprises a larger part of the total surface being scored relative to larger sized potatoes. For example, a cut on a large potato may not affect a large enough surface area to be a scorable defect, but the same size cut would be scorable on a smaller potato. Under such circumstances, it would be much harder for a small potato to meet the U.S. No. 1 grade than it would for a large potato. The U.S. Commercial grade allows a slightly higher percentage of total defects than the U.S. No. 1 grade.

By changing the grade requirement to allow size B potatoes and potatoes measuring from 1-inch minimum diameter to 1¾-inch maximum diameter (commonly referred to as ''creamers'' by the potato industry) to meet U.S. Commercial grade or better, the Committee believes more small potatoes would be available to meet increasing demand, and thus help increase returns to producers. Not only would more small potatoes enter the market, small potatoes typically sell for a premium price in today's marketplace. This change does not affect round, red-skinned potato varieties in the size B and 1-inch minimum diameter to 1¾-inch maximum diameter size, which would continue to meet U.S. No. 1 grade or better. The majority of round, red-skinned potato varieties produced in Area No. 2 supply the food service or restaurant market. This market demands high quality (U.S. No. 1 or better) round, red-skinned potatoes. Therefore, the Committee recommended that the grade requirement for varieties of round, red-skinned potatoes in these size categories remain U.S. No. 1 grade or better.

The Committee believes that by allowing small potatoes to meet the more relaxed U.S. Commercial grade instead of U.S. No. 1 grade, available volume for sale into the fresh market could increase by about 23 percent.

Although facing an increasing demand, the market for small potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that the smaller potatoes do not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

This final rule also adopts from the interim rule the change in the minimum maturity requirement implementation date from August 25 to August 1. The specified ending date of October 31 for the minimum maturity requirement remains unchanged, as do the actual minimum maturity requirements that U.S. No. 2 grade potatoes are not more than ''moderately skinned'' and that all other grades are not more than ''slightly skinned'' (as defined in the U.S. Standards for Grades of Potatoes).

The Committee recommended that the implementation date be moved to August 1 due to the increased use of early maturing potato varieties in this area of Colorado and earlier harvest requirements. Since the skin on most potato varieties has not substantially ''set'', or toughened, early in the season, potato skins have a tendency to more easily scrape off during harvest and the subsequent handling and packing process. By having the maturity requirements in place at the beginning of harvest, there is added assurance that a quality product will reach the consumer.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 200 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2005–2006 marketing year, 17,213,202 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $11.45 per hundredweight, the Committee estimates that 73 Area No. 2 handlers, or about 91 percent, had annual receipts of less than $6,500,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2005 was $9.25 per hundredweight. The average annual fresh potato revenue for each of the 200 Colorado Area No. 2 potato producers is therefore calculated to be approximately $796,112. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

Excluding round, red-skinned potato varieties, this rule continues in effect the action that relaxed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for Area No. 2 potatoes measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1¾-inch maximum diameter. This rule also continues in effect the action that changed the date minimum maturity requirements are implemented from August 25 to August 1 of each year. Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

Since the grade relaxation is expected to benefit producers, handlers and consumers, any potential impact from this action would be positive. By allowing these small potatoes to meet U.S. Commercial grade or better, a potentially greater quantity of potatoes will meet the order's handling regulation. This is expected to translate into an increased market for small potatoes and thus greater returns for handlers and producers and more product choice for consumers. Further, small potatoes are a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that small potatoes do not compete directly with most of the potatoes produced in this area and that the grade requirement relaxation will not adversely effect the overall Area No. 2 potato market.

Based on Committee records, roughly half of Area No. 2 handlers ship size B and smaller potatoes. Committee records also indicate that during the 2004–2005 fiscal period approximately 165,000 hundredweight (less than 1 percent of the total shipments) of size B and smaller were inspected and shipped. As a result of this rule, the Committee estimates that the marketable supply of size B and smaller potatoes will increase by 23 percent and add 37,950 hundredweight to the marketable supply of Area No. 2 potatoes.

As previously noted, this relaxation does not affect round, red-skinned potatoes in the same size categories. These potatoes will continue to pack-out as U.S. No. 1 grade or better to satisfy the quality conscious food service and restaurant markets.

The action that changed the minimum maturity requirement implementation date to August 1 merely updated the regulations so that they are in-line with current cultural practices. Thus, any impact from this change on the producers, handlers, and consumers of Colorado potatoes is expected to be positive since assurance is being added that quality product—a product without undue skinning—will be packed and shipped into the market. The Committee supports the concept that a quality product promotes consumer confidence, thereby helping to protect producer returns.

After discussing possible alternatives to this rule, the Committee determined that a relaxation in the grade requirement to U.S. Commercial grade or better for certain small potatoes would sufficiently meet the industry's current needs. The relaxation in the grade requirement for the affected small potatoes is expected to provide the greatest benefit to the industry by augmenting the developing market for these potatoes and thereby increasing producer returns. During its deliberations, the Committee also considered relaxing the grade requirement for small, round, red-skinned potato varieties. However, food service and restaurant market segments have a preference for round, red-skinned potatoes and demand high quality potatoes (U.S. No. 1 grade or better). The Committee, therefore, found that there were no other viable alternatives for the grade change except as recommended. Lastly, the maturity requirement implementation date change merely brings the regulations in-line with current cultural practices, and therefore, the Committee did not consider further alternatives to this recommended change.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to

reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 10, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 27, 2006 (71 FR 77583). Committee staff sent copies of the rule to all Committee members and Area No. 2 handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 26, 2007.

One comment was received. The commenter stated that regulations were necessary, but believed that all potatoes should have the same requirements. However, the Committee believes that there are specific markets for certain varieties of potatoes, so requirements should be specific to the variety of potato. For example, some varieties of potatoes are better suited for the fresh market than the French fry or processed potato market. Furthermore, marketing order 948, Area No. 2, only regulates the handling of potatoes grown in Area No. 2 of Colorado, and not other U.S. potato producing areas.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 77583, December 27, 2006), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 71 FR 77583 on December 27, 2006, is adopted as a final rule without change.

Dated: March 23, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–5817 Filed 3–28–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS–FV–06–0188; FV07–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2007–2008 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which begins on June 1, 2007. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 886,667 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 1,062,336 pounds and 48 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Effective Date: This final rule becomes effective June 1, 2007.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Susan.Hiller@usda.gov* or *GaryD.Olson@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: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2007–2008 marketing year, which begins on June 1, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with all eight members

present, met on October 4, 2006, and recommended salable quantities and allotment percentages for both classes of oil for the 2007–2008 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 886,667 pounds and 45 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,062,336 pounds and 48 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which begins on June 1, 2007. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for approximately 71 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 43 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with demand and to achieve the Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 4, 2006, meeting, estimated that the 2006–2007 producer price of Scotch oil would be $13.00 to $14.00 per pound. However, there is very little forward contracting being done at the present time. This producer price is approaching the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between $13.50 and $15.00 per pound. However, this study was completed in 2001 and fuel costs alone have doubled in price.

This low level of producer returns has caused an overall reduction in acreage. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The Committee estimates that the 2005–2006 acreage of Scotch spearmint was about 6,137 acres. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the 2005–2006 marketing season will be about 712,539 pounds.

The Committee recommended the 2007–2008 Scotch spearmint oil salable quantity (886,667 pounds) and allotment percentage (45 percent) utilizing sales estimates for 2007–2008 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 875,000 pounds of Scotch spearmint oil, on average, may be sold during the 2007–2008 marketing year. When considered in conjunction with the estimated carry-in of 18,029 pounds of oil on June 1, 2007, the recommended salable quantity of 886,667 pounds results in a total available supply of Scotch spearmint oil next year of about 904,696 pounds.

The recommendation for the 2007–2008 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, the market share is quite different. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, most of the world's supply of Native spearmint is produced in the United States.

The supply and demand characteristics of the current Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady. The average price for the five year period ending in 2005 is $9.38, which is $0.34 lower than the average price for the ten year period (1996–2005) of $9.72. The Committee considers these levels too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Similar to Scotch, the low level of producer returns has also caused an overall reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The Committee estimates that the 2005–2006 acreage of Native spearmint was about 7,688 acres. Based on the reduced Native spearmint acreage, the Committee estimates that production for the 2005–2006 marketing season will be about 999,920 pounds.

The Committee recommended the 2007–2008 Native spearmint oil salable quantity (1,062,336 pounds) and allotment percentage (48 percent) utilizing sales estimates for 2007–2008 Native spearmint oil as provided by several of the industry's handlers, as well as historical and current Native spearmint oil sales levels. The Committee is estimating that about 1,141,667 pounds of Native spearmint oil, on average, may be sold during the 2007–2008 marketing year. When considered in conjunction with the estimated carry-in of 119,057 pounds of oil on June 1, 2007, the recommended salable quantity of 1,062,336 pounds results in a total available supply of Native spearmint oil next year of about 1,181,393 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices since the order's inception, the period from 1980 to 2005, have generally stabilized at an average price of $9.84 per pound for Native spearmint oil and

$12.72 per pound for Scotch spearmint oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2007–2008 marketing year on the information discussed above, as well as the data outlined below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2007—18,029 pounds. This figure is the difference between the revised 2006–2007 marketing year total available supply of 818,029 pounds and the estimated 2006–2007 marketing year trade demand of 800,000 pounds.

(B) Estimated trade demand for the 2007–2008 marketing year—875,000 pounds. This figure is based on input from producers at five Scotch spearmint oil production area meetings held in September 2006, as well as estimates provided by handlers and other meeting participants at the October 4, 2006, meeting. The average estimated trade demand provided at the five production area meetings was 880,000 pounds, whereas the estimated handler trade demand ranged from 850,000 to 900,000 pounds. The average of sales over the last five years was 754,269 pounds.

(C) Salable quantity required from the 2007–2008 marketing year production—856,971 pounds. This figure is the difference between the estimated 2007–2008 marketing year trade demand (875,000 pounds) and the estimated carry-in on June 1, 2007 (18,029 pounds).

(D) Total estimated allotment base for the 2007–2008 marketing year—1,970,370 pounds. This figure represents a one-percent increase over the revised 2006–2007 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—43.5 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This recommendation is based on the Committee's determination that the computed 43.5 percent would not adequately supply the potential 2007–2008 market.

(G) The Committee's recommended salable quantity—886,667 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2007–2008 marketing year—904,696 pounds. This figure is the sum of the 2007–2008 recommended salable quantity (886,667 pounds) and the estimated carry-in on June 1, 2007 (18,029 pounds).

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2007—119,057 pounds. The Committee's estimated carry-in reflects anticipated increases to the salable quantity and allotment percentage that may be needed to meet demand in 2006–2007.

(B) Estimated trade demand for the 2007–2008 marketing year—1,141,667 pounds. This figure is based on input from producers at the six Native spearmint oil production area meetings held in September 2006, as well as estimates provided by handlers and other meeting participants at the October 4, 2006, meeting. The average estimated trade demand provided at the six production area meetings was 1,141,667 pounds, whereas the average handler estimate was 1,183,000 pounds.

(C) Salable quantity required from the 2007–2008 marketing year production—1,022,610 pounds. This figure is the difference between the estimated 2007–2008 marketing year trade demand (1,141,667 pounds) and the estimated carry-in on June 1, 2007 (119,057 pounds).

(D) Total estimated allotment base for the 2007–2008 marketing year—2,213,200 pounds. This figure represents a one percent increase over the revised 2006–2007 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—46.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—48 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the six production area meetings (46.4 percent), and input from producers and handlers at the October 4, 2006, meeting.

(G) The Committee's recommended salable quantity—1,062,336 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2007–2008 marketing year—1,181,393 pounds. This figure is the sum of the 2007–2008 recommended salable quantity (1,062,336 pounds) and the estimated carry-in on June 1, 2007 (119,057 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 886,667 pounds and 45 percent, and 1,062,336 pounds and 48 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and the anticipated supply and trade demand during the 2007–2008 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2007–2008 marketing year may transfer such excess spearmint oil to producers with spearmint oil production less than their annual allotment, or put it into the reserve pool until November 1, 2007.

This regulation is similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2007–2008 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2007–2008 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by

class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2007–2008 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 90 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 58 Scotch spearmint oil producers and 21 of the 90 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil production from 1980 through 2005 was about 0.24. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 26-year average (1.842 million pounds from 1980 through 2005) and the largest crop was approximately 167 percent of the 26-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was

designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2007–2008 marketing year for both classes of oil at 2,016,667 pounds, and that the expected combined carry-in will be 137,086 pounds. This results in a combined salable quantity needed of 1,879,581 pounds. Therefore, with volume control, sales by producers for the 2007–2008 marketing year will be limited to 1,949,003 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2007–2008 producer allotments are based, are 45 percent for Scotch and 48 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.45 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The Far West producer price for both classes of spearmint oil was $10.20 for 2005, which is below the average of $10.83 for the period of 1980 through 2005, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2007–2008 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee considered various alternative levels of volume control for Scotch spearmint oil, including increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously determined that 886,667 pounds and 45 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2007–2008 marketing year.

The Committee also considered various alternative levels of volume control for Native spearmint oil. After considerable discussion the Committee unanimously determined that 1,062,336 pounds and 48 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2007–2008 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2007–2008 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed

extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2005 of $12.72 per pound for Scotch spearmint oil and $9.84 per pound for Native spearmint oil.

During the period of 1998 through 2005, however, large production and carry-in inventories have contributed to prices below the 26-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.10 and $10.00 per pound for Native spearmint oil. The 2005 Native price exceeded the 26-year average by $0.16. Producers stated, however, that fuel cost increases more than offset the price increase.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 4, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on January 22, 2007 (71 FR 2639). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested person. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 21, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.226 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.226 Salable quantities and allotment percentages—2007–2008 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2007, shall be as follows:

(a) *Class 1 (Scotch) oil*—a salable quantity of 886,667 pounds and an allotment percentage of 45 percent.

(b) *Class 3 (Native) oil*—a salable quantity of 1,062,336 pounds and an allotment percentage of 48 percent.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5811 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–7]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to amend four aspects of its Administrative Fines Program (''AFP''), a streamlined process through which the Commission assesses civil money penalties for late filers and non-filers under the Federal Election Campaign Act of 1971, as amended (''FECA''). First, the Commission is revising its rules regarding the permissible grounds for challenging a proposed civil money penalty by clarifying the scope of the defense based on factual errors. Second, the Commission is incorporating a defense for political committees that demonstrate that they used their best efforts to file reports timely. Third, the Commission is revising its rules regarding its final determinations to clarify when the Commission finds that no violation has occurred. Lastly, the rules are being amended to explain that the Commission's statement of reasons for its final decision in an AFP matter usually consists of the reasons set forth by the Commission's reviewing officer as adopted by the Commission. The supplementary information that follows provides further information.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Through the AFP, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures reserved for more serious violations under 2 U.S.C.

437g. *See* 2 U.S.C. 437g(a)(4)(C).[1] Congress intended the Commission to process these straightforward violations through a ''simplified procedure'' that would ease the enforcement burden on the Commission. *See* H.R. Rep. No. 106–295, at 11–12 (1999). The rules governing the AFP create a streamlined procedure that balances the respondent's rights to notice and opportunity to be heard with the need to operate the AFP in an expeditious manner without undue administrative burden. *See* Explanation and Justification for Final Rule on Administrative Fines, 65 FR 31787, 31788 (May 19, 2000) (''*Admin Fines E&J*'').[2]

When the Commission finds reason to believe (''RTB'') that a political committee and its treasurer (''respondents'') violated the reporting requirements, the respondents may challenge the finding and the proposed civil money penalty only for certain specified reasons. *See* revised 11 CFR 111.35. The Commission's reviewing officer considers the challenge and forwards a recommendation to the Commission. *See* 11 CFR 111.36(e). After considering the challenge, the reviewing officer's recommendation, and any subsequent comments from the respondent regarding the recommendation, the Commission makes a final determination. *See* revised 11 CFR 111.37. The Commission assesses civil money penalties based on published penalty schedules set forth in 11 CFR 111.43. Respondents may challenge the Commission's final determination in U.S. District Court. *See* 2 U.S.C. 437g(a)(4)(C)(iii); 11 CFR 111.38.

In *Lovely* v. *FEC,* 307 F. Supp. 2d 294 (D. Mass. 2004), a political committee challenged a civil money penalty assessed by the Commission through the AFP. The political committee argued that it had used its best efforts to file the report in question and that this constituted a valid and complete defense under FECA's ''best efforts'' provision in 2 U.S.C. 432(i). *See Lovely,* 307 F. Supp. 2d at 299. Section 432(i) provides that ''[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with [FECA].'' 2 U.S.C. 432(i).[3] The *Lovely* court concluded that the plain language of FECA requires the Commission to consider the ''best efforts'' defense in the AFP, and that the record in the *Lovely* case did not establish whether the Commission had considered that defense. *See Lovely,* 307 F. Supp. 2d at 300–01. The court remanded the case to the Commission for further proceedings. *See id.* at 301. On remand, the Commission determined that the political committee had failed to show it used best efforts to file timely and confirmed the earlier imposition of the civil money penalty. *See Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005), available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading ''Best Efforts in Administrative Fines Challenges.''

Although the *Lovely* decision did not directly challenge the AFP rules, and did not affect the validity of 11 CFR 111.35 or the Commission's consideration of any other AFP matters, the Commission opted to open a rulemaking by publishing a Notice of Proposed Rulemaking on December 8, 2006, to seek public comment on proposed revisions to the AFP based on the court's concerns. *See Notice of Proposed Rulemaking for Best Efforts in Administrative Fines Challenges,* 71 FR 71093 (Dec. 8, 2006) (''*NPRM*''). The Commission received two comments, which are available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading ''Best Efforts in Administrative Fines Challenges.''[4] One comment made several recommendations as to how the Commission could further clarify the ''best efforts'' defense by incorporating the business management concept of ''best practices'' regarding corporate operation, financial controls, risk prevention and risk assessment, while the other comment was not relevant to this rulemaking.

After consideration of the relevant comment, the Commission has decided to revise its rules governing the AFP in four ways, as described below: (1) Clarifying the scope of the ''factual errors'' defense; (2) incorporating a ''best efforts'' defense for challenges to RTB findings; (3) clarifying when the Commission may find that no violation has occurred in an AFP matter; and (4) explaining the procedure for issuing Commission statements of reasons for AFP final determinations. These changes address the concerns raised by the *Lovely* court and provide greater clarity regarding permissible grounds for challenging an RTB finding. The revisions are substantially similar to those proposed in the *NPRM.*

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 23, 2007.

Explanation And Justification

I. Revised 11 CFR 111.35—Respondent Challenges to Reason To Believe Finding or Proposed Civil Money Penalty

Revised section 111.35 sets forth the requirements for AFP respondents' challenges to RTB findings and proposed civil money penalties. Revised section 111.35(a) is clarified so that it applies only to respondents that seek to challenge an RTB finding or proposed civil money penalty.[5] The Commission is reorganizing and clarifying section 111.35 so that respondents may easily identify the basis for challenges in the AFP. *See* revised 11 CFR 111.35(b).

A. Revised 11 CFR 111.35(b)(1)—Changes to the ''Factual Errors'' Defense

The *NPRM* sought comment on proposed clarifications to the ''factual errors'' defense and asked whether the regulation should include examples of the types of factual errors that would suffice as grounds for challenging an RTB finding. *See NPRM,* 71 FR at 71094. The comment did not address this issue. The Commission has decided to revise

[1] The AFP applies to violations of the reporting requirements by political committees and their treasurers. *See* 11 CFR 111.30.

[2] The AFP is set to expire on December 31, 2008. *See* Pub. L. No. 109–115, sec. 721, 119 Stat. 2396, 2493–94 (2005); *Final Rule on Extension of Administrative Fines Program,* 70 FR 75717 (Dec. 21, 2005) (extending the sunset date in 11 CFR 111.30 to Dec. 31, 2008).

[3] The Commission had long interpreted the ''best efforts'' safe harbor to be limited to political committees' obligation to report certain substantive information that may be beyond the control of the committees to obtain. *See* 11 CFR 104.7 (defining ''best efforts'' for purposes of obtaining and submitting contributor information). The Commission is currently considering in a separate proceeding whether to revise its application of this provision in enforcement matters outside the scope of the AFP. *See Proposed Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act,* 71 FR 71084 (Dec. 8, 2006). The Commission anticipates issuing a final policy statement this year.

[4] The Internal Revenue Service did not comment on the *NPRM.*

[5] The revisions to section 111.35(a) did not alter the basic timing requirement that a respondent must file a challenge with the Commission within forty (40) days of when the Commission issues its reason to believe finding. *See* revised 111.35(a); *Admin Fines E&J,* 65 FR at 31789.

the rule regarding the ''factual errors'' defense as proposed in the *NPRM,* except for stylistic changes. The revised rule states that the facts alleged to be in error must be facts upon which the Commission relied in its RTB finding. *See* revised 11 CFR 111.35(b)(1). Thus, a respondent may not challenge an RTB finding based on factual errors that are irrelevant to the Commission's actual RTB finding, such as errors in the RTB finding regarding individual names or titles of committee staff.

The revised rule provides two examples of the type of factual errors that would properly support a challenge: the respondent was not required to file the report in question, and the respondent did in fact timely file as described in 11 CFR 100.19. *See* revised 11 CFR 111.35(b)(1). For example, a political committee that is not subject to electronic filing requirements could challenge an RTB finding and proposed civil money penalty under section 111.35(b)(1) by showing that the paper copy was filed on time and the Commission relied on the factual error that the committee was required instead to file electronically. *See* 11 CFR 104.18(a). As referenced in the rule's second example, Commission rules currently state that certain reports are ''timely filed'' if they are deposited as registered or certified mail with the U.S. Post Office, as Priority Mail or Express Mail through the U.S. Post Office, or with an overnight delivery service to be delivered the next business day with a postmark no later than 11:59 p.m. EST on the filing date. *See* 11 CFR 100.19(b). Thus, a respondent who is not required to file electronically could challenge an RTB finding based on evidence that it deposited the report in the proper manner pursuant to section 100.19(b) on the filing date, even if the Commission did not receive the report because of a delivery failure by the U.S. Post Office or other delivery service. The Commission emphasizes that the revisions to section 111.35(b)(1) do not create any new ''factual errors'' defenses, but simply recognize the types of errors that the Commission has accepted previously as a defense in the AFP.

B. Revised 11 CFR 111.35(b)(3)—''Best Efforts'' Defense

The *NPRM* also sought comment on whether to replace the ''extraordinary circumstances'' defense in the prior rule with a ''best efforts'' defense for challenging an RTB finding based upon 2 U.S.C. 432(i). *See NPRM,* 71 FR at 71094–95 and former 11 CFR 111.35(b)(1)(iii). The comment generally supported the idea of a ''best efforts'' defense. The Commission has decided to adopt the *Lovely* court's interpretation of 2 U.S.C. 432(i) and to incorporate a ''best efforts'' defense into the AFP. It appears in revised 11 CFR 111.35(b)(3) and is the same as the proposed rule, except for the changes noted below. The ''best efforts'' defense in the revised rule completely replaces the prior ''extraordinary circumstances'' defense because the two defenses are largely coextensive. The Commission reiterates its policy determination, as stated in the initial rulemaking for the AFP, that respondents' defenses in the AFP should be limited because the complete and timely disclosure of the political committee's financial activity is a ''cornerstone of campaign finance law.'' *See Admin Fines E&J,* 65 FR at 31789.

The *Lovely* court recognized that the Commission could ''refine by regulation what best efforts means in the context of submitting a report.'' *Lovely*, 307 F. Supp. 2d at 300. In exercising its authority to interpret how to incorporate a ''best efforts'' defense into the AFP rules, the Commission is mindful of the statutory terms chosen by Congress. As also explained by the Commission in its statement of reasons in the *Lovely* case after remand, section 432(i) creates a safe harbor for treasurers who demonstrate that best efforts have been used to submit reports required by FECA. ''Best'' is an adjective of the superlative degree. Therefore, best efforts requires more than ''some'' or ''good'' efforts. Section 432(i)'s use of the phrase ''best efforts,'' instead of a ''good faith'' standard, means that an AFP respondent cannot rely upon the state of mind of the committee's treasurer or staff to claim this defense.[6] Instead, the Commission's revised rule at 11 CFR 111.35(b)(3), which sets forth the ''best efforts'' defense, focuses on actions taken by the respondent committee or treasurer to comply with reporting deadlines.

The ''best efforts'' defense is described in the revised rule as a two-part test. The AFP respondent must demonstrate that: (1) The respondent was prevented from filing in a timely manner by ''reasonably unforeseen circumstances that were beyond the control'' of the respondent; and (2) the respondent filed the report in question no later than 24 hours after the end of the reasonably unforeseen circumstances preventing the timely filing. *See* revised 11 CFR 111.35(b)(3). The Commission believes this test is straightforward and should be easy for respondents to understand and document in their written responses. The final rule differs slightly from the proposed rule, which would have stated that the respondent must be prevented from filing in a timely manner by ''unforeseen'' circumstances. The Commission is making this change to emphasize that the ''best efforts'' defense is an objective test, which uses a reasonable person standard and does not depend upon the committee's treasurer or staff's subjective ability to foresee a particular circumstance. The examples included in the rule in 11 CFR 111.35(c) and (d), described below, illustrate how this defense operates as an objective test.

Under the first part of the defense, the respondent bears the burden of showing that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report. The *NPRM* requested public comment regarding whether the Commission should apply a ''but for'' or ''contributing factor'' test for determining whether a respondent was prevented from timely filing under the rule. *See NPRM,* 71 FR at 71095. The comment did not address this issue. The Commission has decided that this rule requires a strict causal relationship between the circumstances described in the challenge (such as a natural disaster) and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. ''Best efforts'' is a high standard set by FECA, and the Commission reminds respondents that there are multiple ways for a committee to file required reports properly and timely. *See, e.g.,* 11 CFR 100.19(b) (political committees not required to file electronically may file on paper by hand delivery, first class, registered, certified, Priority or Express U.S. Mail, or overnight delivery service); 11 CFR 104.18 (mandatory electronic filings accepted through the Commission's filing system via internet, modem, or by submission of diskette or CD). If the respondent is prevented from using one method of filing by a problem (such as a technical problem with the Commission's modems), the respondent cannot claim the ''best efforts'' defense if it did not attempt to use other available methods to file timely (such as

[6] *See Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005).

submission on a diskette or CD).[7] Therefore, to satisfy the ''best efforts'' defense, a respondent must demonstrate that it attempted to use all available methods to file, but that timely filing by each method was *prevented* by the reasonably unforeseen circumstances beyond the control of the respondent.

The direct causal link between the reasonably unforeseen circumstances and the ability of the respondent to file the report also underlies the second part of the test for the ''best efforts'' defense. A respondent must show that the report was properly filed no later than 24 hours after the resolution of the circumstances preventing the timely filing. When the situation (such as a problem with Commission computers) is resolved, the Act's high standard of ''best efforts'' requires that the respondent file the report within a reasonably short period of time. The *NPRM* requested public comment regarding whether the 24-hour period in the proposed rule was appropriate for the ''best efforts'' defense. *See NPRM,* 71 FR at 71095. The comment did not address this issue. The Commission has determined that a 24-hour period best serves the interest in disclosure of the information as soon as practicable after the circumstances preventing the timely disclosure are resolved.

C. Examples of Circumstances Under the ''Best Efforts'' Defense

To provide further guidance to respondents regarding the scope of the ''best efforts'' defense, the revised rule includes examples of circumstances that will be considered ''reasonably unforeseen and beyond the control of the respondent,'' and examples of circumstances that will *not* be considered ''reasonably unforeseen and beyond the control of the respondent.'' *See* revised 11 CFR 111.35(c) and (d). The comment argued that the rule should not be limited to examples of defenses that would be unacceptable under the new ''best efforts'' defense, but should also include examples of defenses that would meet the new defense to provide guidance to committees and treasurers. The revised rule provides such illustrations. The examples of defenses in the revised rule are the same as proposed in the *NPRM,* except as noted otherwise below. Both sets of examples in revised section 111.35(c) and (d) are non-exhaustive lists and should not be read to override the general requirements of the defense in revised section 111.35(b)(3) as discussed above.

1. Revised 11 CFR 111.35(c)—Reasonably Unforeseen Circumstances Beyond Respondents' Control

Revised section 111.35(c) provides three examples of circumstances that the Commission will consider ''reasonably unforeseen and beyond the control'' of the respondent under a ''best efforts'' defense. The first example is that a failure of Commission computers or Commission-provided software, despite the respondent seeking technical assistance, caused the respondent's untimely electronic filing. *See* revised 11 CFR 111.35(c)(1). This example is similar to the example in the prior rules, in which a failure of Commission computers satisfied the ''extraordinary circumstances'' defense. *See* former 11 CFR 111.35(b)(4)(iv); *Admin Fines E&J,* 65 FR at 31790 (''Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control.'').[8] The revised rule differs from the proposed rule by including the respondent's seeking technical assistance as part of the example. Consistent with the prior defense based on Commission computer failures, the revised example clarifies that political committees must use all Commission resources available to aid with electronic filing, such as technical support manuals and personnel, before a respondent will be considered ''prevented'' from timely filing by Commission computer or software failures. Thus, any failure of Commission computers, servers, filing system or Commission-provided software of sufficient severity that it results in a respondent being unable to file, despite the respondent seeking assistance from the Commission's technical support personnel, is a reasonably unforeseen circumstance beyond the respondent's control.

The second example in revised section 111.35(c)(2) is a ''widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider.'' This example covers circumstances in which technological problems at a third-party hub or information transfer location, rather than the Commission's or respondent's computer systems, caused widespread communication failures on the Internet that left the respondent unable to send, or the Commission unable to receive, an electronically filed report. This failure to transmit information must occur irrespective of any failures of the Commission's or respondent's computer systems or Internet service providers. If a respondent demonstrates such a widespread disruption of information transmissions occurred, the Commission will consider it ''reasonably unforeseen circumstances that were beyond the control'' of the respondent. As with all the examples in revised section 111.35(c)(2), the respondent bears the burden of showing that these reasonably unforeseen circumstances *in fact prevented* the respondent from filing timely, despite attempts to file by any available alternative methods permitted under Commission regulations.[9] This example has been refined from the proposed rule to clarify the types of transmission failures contemplated.

The final example in the rule states that a ''[s]evere weather or other disaster-related incident'' is a reasonably unforeseen circumstance beyond the control of the respondent. *See* revised 11 CFR 111.35(c)(3). Under the prior rule, the Commission deemed certain weather conditions (lasting more than 48 hours) met the ''extraordinary circumstances'' test, explaining that ''natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records'' would satisfy the defense. *See* previous 11 CFR 111.35(b)(1)(iii); *Admin Fines E&J,* 65 FR at 31790. The revised rule permits such severe weather-related events occurring at the respondent's or Commission's location

[7] The Commission's guidance and instructions to political committees required to file electronically makes clear that if a report is successfully uploaded and accepted by the Commission, a confirmation receipt (including a validation number) is immediately sent to the committee via e-mail, fax or both. If a committee does not receive such a receipt, the committee should not assume the filing was received and should contact the Commission's technical support personnel. *See, e.g.,* ''Frequently Asked Questions About Electronic Filing,'' *available at http://www.fec.gov/support/faq_filing.shtml* (last visited Mar. 16, 2007); ''Common Electronic Filing Mistakes,'' *available at http://www.fec.gov/elecfil/mistakes.shtml* (last visited Mar. 16, 2007).

[8] In order to satisfy the prior ''extraordinary circumstances'' defense, the failure of Commission computers had to last at least 48 hours. *See* former 11 CFR 111.35(b)(1)(iii). The new ''best efforts'' defense does not contain any minimum time period for the ''reasonably unforeseen circumstances that were beyond the control'' of the respondent. *See* revised 11 CFR 111.35(b)(3).

[9] The Commission's electronic filing manuals detail step-by-step instructions for the various methods of acceptable electronic filing via the Internet, modem, or by saving the report to a diskette or CD. *See, e.g.,* ''FECFile User Manual for Candidate Committees,'' *available at http://www.fec.gov/elecfil/authorized_manual/manual.shtml* (last visited Mar. 16, 2007).

to form the basis for a ''best efforts'' defense. The Commission is not defining with specificity the level of severity for weather or other disaster-related incidents in revised section 111.35(c)(3) because a respondent's challenge must show that the weather or disaster-related incident *in fact prevented* the respondent from filing timely. Given that the effects upon the respondent of each weather or disaster-related incident will vary, the Commission will evaluate the particular facts contained in individual challenges, instead of mandating such details in a rule of general application.

2. Revised 11 CFR 111.35(d)—Circumstances That Are Not Reasonably Unforeseen or Beyond Respondents' Control

Revised section 111.35(d) includes a non-exhaustive list of circumstances that are *not* considered ''reasonably unforeseen and beyond the control'' of the respondent, and will not support a ''best efforts'' finding. *See* revised 11 CFR 111.35(d)(1) through (6). All but two of these examples are drawn from the list of events that did not constitute ''extraordinary circumstances'' under the Commission's prior rule: Negligence; delays caused by committee vendors or contractors; illness, inexperience or unavailability (including death) of the treasurer or other staff; and committee computer, software or Internet service provider failures. *Compare* revised 11 CFR 111.35(d)(1) through (4) *with* former 11 CFR 111.35(b)(4). One example concerns Internet service provider failures. *See* revised 11 CFR 111.35(d)(4). The proposed rule described this example as failures of committee computers or software. The final rule also includes Internet service provider failures. Because many Internet service providers are available, a failure limited to one provider is not a defense for late filing or not filing. The revised rule adds two examples to this list based upon the Commission's experience with respondent challenges in the AFP: A failure to know filing dates and a failure to use Commission software properly. *See* revised 11 CFR 111.35(d)(5) and (6).

Under the revised rule, a respondent's challenge will not succeed if its ''best efforts'' defense is based on any of these circumstances as the cause of the failure to file timely. The Commission notes that the examples in revised section 111.35(d) are not exhaustive, but are illustrative of the types of situations that are not reasonably unforeseen *and* beyond the respondent's control. The Commission strongly encourages all political committees to name assistant treasurers and have additional staff available so that their ability to file reports on time will not be compromised due to the unavailability or inexperience of the treasurer or other staff. *See Final Rules on Administrative Fines*, 68 FR 12572, 12573 (Mar. 17, 2003) (adding staff ''inexperience'' and ''unavailability'' as examples of circumstances that will not be considered ''extraordinary'' under former 11 CFR 111.35(b)(4)(iii)).

The Commission's implementation of the ''best efforts'' defense set forth in this revised rule serves as a proxy for the factual investigation of a respondent's internal practices regarding filing of reports that would ordinarily be necessary to determine whether such practices were sufficient to constitute best efforts. The comment argued that the Commission should conduct a full examination of the business models and management procedures of each committee to determine whether the committee implemented proper back-up systems and other measures reflecting management ''best practices'' in the relevant industry to reduce the risk of a late filing. However, such an investigation would be resource-intensive for the Commission, burdensome for the respondent, and inappropriate in the AFP, which is a streamlined procedure created by Congress to alleviate the Commission's enforcement burden for routine and minor filing violations. Absent reasonably unforeseen circumstances that were beyond the control of the respondent, the Commission sees no reason why political committees cannot file reports on time.[10] Thus, the Commission's implementation of the ''best efforts'' defense appropriately incorporates a statutory ''best efforts'' standard, while taking into account the unique streamlined nature of the AFP.

D. Revised 11 CFR 111.35(e)—Factual Basis for Challenge

The Commission is adding paragraph (e) to 11 CFR 111.35 to require that the respondent's written response must detail the factual basis supporting its challenge. Furthermore, respondents must provide supporting documentation for their challenges. The comment did not address this provision, which is identical to the proposed rule.

The three defenses specified in sections 111.35(b)(1) through (3) (factual error, miscalculation of civil money penalty, and best efforts) are the only permissible grounds for challenging the Commission's RTB finding or proposed civil money penalty, and a respondent's written response must be based on one of these grounds to be considered by the reviewing officer and the Commission. Respondents bear the burden of showing that a permissible defense is satisfied.[11]

II. Revised 11 CFR 111.37—Commission Review of Respondent's Challenge and Reviewing Officer's Recommendation

A. Revised 11 CFR 111.37(b)—Commission Finding That No Violation Has Occurred

Revised section 111.37 sets forth procedures regarding the Commission's final determination for AFP matters upon receipt of the respondent's challenge and the reviewing officer's recommendation. *See* revised 11 CFR 111.37(a) through (d). The *NPRM* sought comment on proposed revisions to section 111.37(b) regarding Commission determinations that no violation has occurred where the RTB finding is based on a factual error, and where the respondent demonstrated it used best efforts to file timely. *See NPRM*, 71 FR at 71095. The comment did not address these rules. The Commission is revising section 111.37(b) to clarify that the existence of factual errors or a finding of best efforts are complete defenses. Thus, if one of these defenses is satisfied, the Commission will conclude that no violation of FECA has occurred. Please note that the defense based on an incorrect basis for calculating the civil money penalty (section 111.35(b)(2)) is a defense only as to the amount of the civil money penalty and does not serve as a basis for a finding of no violation under the AFP.

B. Revised 11 CFR 111.37(d)—Commission Statement of Reasons in AFP Final Determinations

The *NPRM* sought comment on proposed revisions to section 111.37(d) to make clear that the reasons for the reviewing officer's recommendation regarding the challenge, unless modified or rejected by the Commission, will serve as the Commission's statement of reasons regarding the final determination in the AFP matter.[12] See NPRM, 71 FR at 71095. This proposed

[10] *See Admin Fines E&J*, 65 FR at 31790 (stating that political committees should be aware of their reporting duties and noting that the Commission makes efforts to send reminders of deadlines and political committees have ample time from the end of the reporting period to the filing deadline to prepare and file reports).

[11] The Commission considers affidavits more persuasive evidence than unsworn statements submitted in support of the respondent's challenge.

[12] These revisions do not affect any statements of reasons the Commissioners may issue in enforcement matters under review.

revision addresses the *Lovely* court's concerns that it was unclear what constituted the statement of reasons for the Commission's final determination in that matter. The comment did not address this issue.

The Commission is revising section 111.37(d) to indicate that, unless otherwise indicated by the Commission, the statement of reasons for the Commission's final determination in an AFP matter consists of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission. *See Lovely*, 307 F. Supp. 2d at 301 (stating that the Commission's ''adoption of a reviewing officer's recommendation may suffice in some circumstances''). Statements setting forth additional or different reasons may also be issued. The revised rule also recognizes that the Commission may modify or reject the reviewing officer's recommendation in whole or in part. *See* 11 CFR 111.37(d). In such cases, the Commission will indicate the grounds for its action and it or individual Commissioners may issue one or more statements of reasons.

Former section 111.37(d) provided that the Commission could determine that a violation of 2 U.S.C. 434(a) had occurred, but waive the civil money penalty because the respondent demonstrated the existence of ''extraordinary circumstances'' under former section 111.35(b)(1)(iii). *See* former 11 CFR 111.37(d). As discussed above, the Commission is removing the ''extraordinary circumstances'' defense and replacing it with a ''best efforts'' defense in revised section 111.35(b)(3). Under 2 U.S.C. 432(i), if the Commission determines that the treasurer used best efforts in compliance with this rule, there is no violation of FECA and the Commission will so notify the respondent pursuant to revised section 111.37(b). *See* revised 11 CFR 111.37(b). Therefore, the Commission need not retain the former section 111.37(d).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities affected by these rules are not ''small entities'' under 5 U.S.C. 601(6). The definition of ''small entity'' does not include individuals, and classifies a not-for-profit enterprise as a ''small organization'' if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). The rules apply to all types of political committees and their treasurers. State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties or any other political committees might be considered ''small organizations,'' the number that would be affected by this rule is not substantial.

Furthermore, any separate segregated funds affected by these rules are not-for-profit political committees that do not meet the definition of ''small organization'' because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated. Most of the other political committees affected by these rules are not-for-profit committees that do not meet the definition of ''small organization.'' Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

The final rules also do not impose any additional restrictions or increase the costs of compliance for respondents within the AFP. Instead, the final rules provide additional defenses available to political committees and their treasurers, thereby potentially increasing the number of situations in which the Commission assesses no civil money penalty. Moreover, these rules apply only in the AFP, where penalties are proportionate to the amount of a political committee's financial activity. Any political committee meeting the definition of ''small entity'' would be subject to lower fines than larger committees with more financial activity. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapter A of chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 is revised to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.35 is revised to read as follows:

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) The respondent's written response must assert at least one of the following grounds for challenging the reason to believe finding or proposed civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the committee was not required to file the report, or the committee timely filed the report in accordance with 11 CFR 100.19;

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent used best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and

(ii) The respondent filed no later than 24 hours after the end of these circumstances.

(c) Circumstances that will be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) A failure of Commission computers or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;

(2) A widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider; and

(3) Severe weather or other disaster-related incident.

(d) Circumstances that will not be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) Negligence;

(2) Delays caused by committee vendors or contractors;

(3) Illness, inexperience, or unavailability of the treasurer or other staff;

(4) Committee computer, software or Internet service provider failures;

(5) A committee's failure to know filing dates; and

(6) A committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting its challenge and include supporting documentation.

■ 3. In section 111.37, paragraphs (b) and (d) are revised to read as follows:

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

* * * * *

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent used best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

* * * * *

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action will, unless otherwise indicated by the Commission, consist of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission, although statements setting forth additional or different reasons may also be issued. If the reviewing officer's recommendation is modified or not approved, the Commission will indicate the grounds for its action and one or more statements of reasons may be issued.

Dated: March 22, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–5730 Filed 3–28–07; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2006–26477]

FAA Civil Penalty Adjudication Web Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA has a Web site that provides access to many documents relating to the agency's administrative adjudication of civil penalty cases. Currently, the address provided in the regulations for the civil penalty adjudication Web site is incorrect. In this rulemaking, we are amending the regulations to substitute the correct Web site address.

DATES: This rule is effective on March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila Skojec, Office of the Chief Counsel, Adjudication Branch, 800 Independence Avenue, SW., Washington, DC, 20591; telephone 202/385–8228.

SUPPLEMENTARY INFORMATION:

Background

The FAA assesses civil penalties for violations of certain provisions of the Federal aviation statute and the Federal hazardous materials transportation statute. The rules of practice in 14 CFR 13.16 and 14 CFR part 13, subpart G (14 CFR 13.201–13.235) govern these proceedings involving the adjudication of civil penalties.

The agency has a Web site containing documents relating to the agency's adjudication of civil penalties. These documents include decisions and orders issued by the Administrator, indexes of decisions, contact information for the Hearing Docket and the administrative law judges, the rules of practice, and other information.

We recently discovered that the address for the Web site set forth in 14 CFR 13.210 is incorrect. As a result, we are amending the rules to correct this problem.

This Rulemaking

FAA Civil Penalty Adjudication Web Site. We are amending section 13.210 to correct the Web site address for the FAA civil penalty adjudication Web site. The correct address is: *http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.*

Procedural Matters

In general, under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the change. It is in the public interest for the Rules of Practice to provide the correct address for the civil penalty adjudication Web site as soon as possible.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendments

■ Accordingly, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority section for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5128, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.47.

■ 2. Amend § 13.210 by revising paragraphs (e)(2) to read as follows:

§ 13.210 Filing of documents.

* * * * *

(e) * * *

(1) * * *

(2) Decisions and orders issued by the Administrator in civil penalty cases, indexes of decisions, contact information for the FAA Hearing Docket and the administrative law judges, the rules of practice, and other information are available on the FAA civil penalty adjudication Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.*

Issued in Washington, DC on March 23, 2007.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 07–1524 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

[Regulation No. 2; Docket No. SSA–2007–0020]

RIN 0960–AG46

Technical Amendments To Correct Cross-References

AGENCY: Social Security Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains three technical corrections to our regulations. We are changing three cross-references because they are currently incorrect.

EFFECTIVE DATE: Effective on March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Rosemarie A. Greenwald, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 966–7813 or TTY 1–800–325–0778 for information about these correcting amendments. For information on eligibility or filing for benefits, call our national toll-free numbers 1–(800)–772–1213 or TTY 1–(800)–325–0778. You may also contact Social Security online at *http://www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION: We are making corrections to our current regulations at 20 CFR 402.35(b)(2) which contain errors. The three cross-references in the last sentence of § 402.35(b)(2) incorrectly show §§ 404.984(b), 410.610c(b) and 416.1484(b). We are changing these to reflect the correct cross-references.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance and 96.006 Supplemental Security Income.

List of Subjects in 20 CFR Part 402

Administrative practice and procedure; Freedom of information.

Dated: March 21, 2007.

Paul Kryglik,

Acting SSA Regulations Officer.

■ For the reasons set out in the preamble, part 402 of chapter III of title 20 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

■ 1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 30 U.S.C. 923(b); 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Section 402.35 is corrected by revising the last sentence of paragraph (b)(2) to read as follows:

§ 402.35 Publication.

* * * * *

(b) * * *

(2) * * * For a description of Social Security Acquiescence Rulings, see 20 CFR 404.985(c), 410.670c(b), and 416.1485(c) of this title.

* * * * *

[FR Doc. E7–5494 Filed 3–28–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 310

[Docket No. 1978N–0036L] (formerly Docket No. 1978N–036L)

RIN 0910–AF38

Laxative Drug Products for Over-the-Counter Human Use; Psyllium Ingredients in Granular Dosage Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that over-the-counter (OTC) laxative drug products in granular dosage form containing the bulk-forming psyllium ingredients (psyllium (hemicellulose), psyllium hydrophilic mucilloid, psyllium seed, psyllium seed (blond), psyllium seed husks, plantago ovata husks, and plantago seed) are not generally recognized as safe and effective (GRASE) and are misbranded. This final rule includes, but is not limited to, any granules that are swallowed dry prior to drinking liquid; dispersed, suspended, or partially dissolved in liquid prior to swallowing; chewed, partially chewed, or unchewed, and then washed down (or swallowed) with liquid; or sprinkled over food. FDA is issuing this final rule after considering reports of esophageal obstruction associated with the use of psyllium laxatives in granular dosage form. These cases continue to occur despite efforts to promote safe use through label warnings and directions. This final rule does not apply to psyllium laxatives in nongranular dosage forms, such as powders, tablets, or wafers. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This rule is effective October 1, 2007.

Compliance Date: The compliance date for all products subject to this final rule, including products with annual sales less than $25,000, is October 1, 2007.

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

FOR FURTHER INFORMATION CONTACT: Reynold Tan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MS 5411, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the advance notice of proposed rulemaking (ANPRM) for OTC laxative, antidiarrheal, emetic, and antiemetic drug products (40 FR 12902 at 12906, March 21, 1975), the advisory review panel on OTC laxative, antidiarrheal, emetic, and antiemetic drug products (the Panel) recommended Category I (GRASE and not misbranded) status for the OTC bulk laxative psyllium ingredients, which included plantago seed, plantago ovata husks, psyllium (hemicellulose), psyllium hydrophilic mucilloid, psyllium seed, psyllium seed (blond), and psyllium seed husks. FDA concurred with the Panel's Category I classification of these ingredients in the tentative final monograph (TFM) published in the **Federal Register** of January 15, 1985 (50 FR 2124 at 2152).

In the ANPRM, the Panel recommended a warning statement (21 CFR 334.52(a)(1)) for bulk-forming laxatives that advised drinking a full glass, 8 ounces (oz), of liquid with each

dose and direction statements (§ 334.10(f)) advising adequate fluid intake (40 FR 12902 at 12942). The Panel concluded that adequate fluid intake was necessary for the proper use of bulk-forming laxatives, because esophageal and intestinal obstruction had occurred from ingesting bulk-forming laxatives with insufficient water or in the presence of certain disease conditions (40 FR 12908). FDA discussed in comments 36 and 37 of the TFM (50 FR 2124 at 2131 and 2132) the risk of esophageal obstruction from certain bulk laxative ingredients, including water-soluble gums, and the need for adequate fluid intake (8 oz) with each dose. FDA proposed the direction ''Drink a full glass (8 oz) of liquid with each dose'' to define adequate fluid intake.

In the **Federal Register** of October 1, 1986 (51 FR 35136), FDA amended the TFM and proposed that daily doses of bulk-forming laxative ingredients be administered in divided doses, rather than a single dose. The amendment was based on data that indicated the maximum daily dose of some bulk-forming laxatives was so large that it could pose a risk of esophageal obstruction if taken at one time (51 FR 35136).

Subsequently, cases of esophageal obstruction due to ingestion of laxative products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids, including psyllium, were reported and FDA published a proposed rule in the **Federal Register** of October 30, 1990 (55 FR 45782) to require a warning in the labeling of all OTC drug products containing water-soluble gums as active ingredients. FDA added the warning to alert users to take adequate fluid and to avoid using these products if the person had previously experienced any difficulty in swallowing. FDA followed up by publishing a final rule requiring new warning and direction statements in the **Federal Register** of August 26, 1993 (58 FR 45194) and amended that rule in the **Federal Register** of March 17, 1999 (64 FR 13254 at 13292). The current warnings and directions (in § 201.319(b) (21 CFR 201.319(b)) state:

'''Choking' [highlighted in bold type]: Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have difficulty in swallowing. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention;'' and

'''Directions' [highlighted in bold type]:'' (Select one of the following, as appropriate: ''Take'' or ''Mix'') ''this product (child or adult dose) with at least 8 ounces (a full glass) of water or other fluid. Taking this product without enough liquid may cause choking. See choking warning.''

FDA later considered data and other information about the safety of laxative products in granular dosage form containing psyllium, one of the active ingredients included in the water-soluble gum category. FDA tentatively concluded that these products posed an unacceptable safety risk, because esophageal obstructions continued to occur with these products despite requiring label warnings and directions. In the **Federal Register** of August 5, 2003 (68 FR 46133), FDA proposed an amendment to the laxative TFM to reclassify psyllium laxatives in granular dosage form from Category I to Category II (not GRASE or misbranded). In response to the proposed amendment, one manufacturer of a psyllium laxative product in a granular dosage form submitted a comment that is discussed in section II of this document.

II. FDA's Conclusions on the Comment

(Comment 1) The comment disagreed with FDA's proposal to reclassify psyllium laxative products in granular dosage form from Category I to Category II. The comment argued that the proposed rule should be withdrawn for the following reasons:

- FDA's analysis overstated the risks of granular psyllium.

The comment stated that the number of events potentially related to psyllium products in granular dosage form is small relative to the number of doses taken by consumers. Further, of the 78 total cases of esophageal obstruction recorded for the company's granular dosage form product in FDA's Adverse Event Reporting System by the year 2000 (Ref. 1), only 17 cases had occurred since 1989. The comment's product was introduced to the U.S. market in 1980. Therefore, the comment contended that the 17 cases that occurred from 1989 to 2000 was not a basis for increased safety concern considering that 61 cases occurred from 1980 to 1989.

- FDA's analysis concentrated improperly on the granular dosage form of psyllium products.

The comment argued that the data reviewed by FDA contained information suggesting that psyllium products in powder dosage forms may present more serious safety problems (e.g., asphyxiation) than granular dosage forms. The comment further contended that because FDA published the August 26, 1993, final rule requiring warning and direction statements for all water-soluble gum products, FDA has focused solely on psyllium products in granular dosage form and ignored serious adverse effects associated with other dosage forms. The comment argued that the failure to use the same methods to obtain adverse events data for psyllium products in both granular and nongranular dosage forms undermines FDA's conclusion that only granular dosage forms pose an unacceptable risk. Of the 98 adverse events associated with all psyllium products recorded by FDA between 1966 to 2000 (Ref. 1), 3 deaths were associated with powder dosage forms compared to only 1 death associated with granular dosage forms, which the comment contended was not directly caused by the granular dosage form (Ref. 2). The comment stated that FDA emphasized the single fatality associated with psyllium laxatives in the granular dosage form, but ignored the fatalities associated with psyllium laxatives in nongranular dosage forms. The comment stated that the record of fatalities did not support FDA's conclusions concerning the risk from granular dosage forms containing psyllium. Rather, FDA should have requested safety records from manufacturers of nongranular dosage forms, similar to those requested from the distributor of a granular product.

- FDA failed to consider the benefits of granular psyllium products.

The comment contended that psyllium laxatives in granular dosage form are preferred by millions of consumers over powder and other forms, are the most widely used laxative drugs in the world, and have provided safe and effective relief for many years. The comment submitted an article (Ref. 3) that reported a clinical study comparing psyllium-containing products in granular and powder dosage forms in constipated subjects. In the study, the psyllium plus senna combination product in granular dosage form was significantly superior to the psyllium-only product in powder dosage form with respect to stool frequency, moisture content, and weight.

- FDA should consider foreign safety data.

The comment submitted listings of suspected foreign cases of dysphagia (difficulty in swallowing) associated with the use of its two psyllium laxative products in granular dosage form from 1980 to 2003 (Refs. 4 and 5). The comment reported three serious, and five nonserious, cases for the company's psyllium plus senna laxative in granular dosage form and six serious, and two

nonserious, cases for the company's psyllium-only laxative in granular dosage form. None of these cases resulted in serious injury or death.

(Response) FDA disagrees that its analysis overstated the risks of psyllium products in granular dosage form. While the number of adverse events reports of esophageal blockage associated with psyllium laxatives in granular dosage form is low relative to the number of doses taken, many of the reports describe serious medical consequences. Of the 78 reports of esophageal obstruction and choking-related events associated with psyllium laxatives in granular dosage form, 59 required hospitalization or medical intervention, including endoscopic procedures to remove blockages (68 FR 46133 at 46134). The manufacturer's claim that 1 death among 78 adverse events indicates the relative safety of the company's granular dosage form product ignores the fact that these 78 events represent most of the 98 total events of esophageal obstruction associated with all dosage forms containing psyllium reported between 1966 and 2000 (68 FR 46133 at 46134).

Although the comment claims that 17 case reports of esophageal obstruction from 1989 to 2000 should not be considered a basis for increased safety concern, FDA believes that reports of 44 adverse events related to esophageal obstruction reported between January 1999 and May 2002 (68 FR 46133 at 46135) does provide this basis. In 1993, FDA required labeling for all products containing water-soluble gums, including psyllium, to include a warning of possible esophageal obstruction and directions to take adequate fluid. Many of these recent events occurred even though the users had complied with the label directions. Thus, FDA has concerns that the problem of esophageal obstruction cannot be addressed through labeling. In addition, these adverse events are probably significantly underreported. OTC drugs without approved applications were not subject to mandatory reporting requirements, prior to the enactment of the Dietary Supplement and Nonprescription Drug Consumer Protection Act (S. 3546), which was signed by the President on December 22, 2006, and voluntary submission of reports by health professionals normally account for only about 10 percent of all reports in FDA's spontaneous reporting system. Under S. 3546, which amends the Federal Food, Drug, and Cosmetic Act, manufacturers, packers, or distributors of certain nonprescription drugs must report serious adverse events to FDA.

FDA acknowledges the occurrence of esophageal obstruction and choking-related events associated with psyllium laxatives in nongranular dosage forms. In 2000, FDA reviewed reports from its adverse event reporting system (AERS) database and the medical literature for esophageal obstruction and choking-related events associated with psyllium laxatives in all dosage forms, not granular dosage forms alone (Ref. 6). This review found 98 total adverse events. Of the four deaths reported, only one death was related to a psyllium laxative in a granular dosage form, swallowed unchewed with liquid. However, significantly more esophageal obstruction and choking-related events (78 out of 98) were associated with the granular dosage form compared to the powder or wafer dosage form (68 FR 46133 at 46135), and these events frequently required medical intervention (59 out of 78). Only 13 out of the 98 choking-related and esophageal obstruction events were reported for a leading psyllium laxative in powder dosage form. Only 2 of these 13 events were confirmed cases of esophageal obstruction, where a mass blocking the esophagus was actually visualized. The two events involved subjects who, along with a psyllium laxative in powder dosage form, took an additional medicine (contrast medium tablets or a pain relief caplet), which was later found in the blocking mass. In comparison, most of the events associated with the psyllium laxatives in granular dosage form (59 out of 78) were confirmed cases of esophageal obstruction, requiring medical intervention to relieve the obstruction. None of the esophageal obstruction cases associated with psyllium laxatives in granular dosage form mentioned an additional medicine being taken as a complicating factor.

FDA subsequently requested an update of adverse events associated with psyllium laxatives in granular dosage form from a major manufacturer of these products. This manufacturer reported 43 events of esophageal obstruction associated with the company's psyllium products in granular dosage form occurring between January 1999 and January 2001 (Ref. 7). In May 2002, FDA searched the AERS database for events of esophageal obstruction that had occurred since the previous search in October 2000, and found one additional event caused by this same psyllium product in granular dosage form (Ref. 8). These more recent events occurred despite labeling changes initiated by the manufacturer, as well as labeling required by FDA (§ 201.319).

FDA concludes that this safety risk posed by psyllium laxatives in granular dosage form outweighs the benefits of these products. To support its claim that FDA failed to consider the benefits of psyllium laxatives in granular dosage form, the comment contended that granular dosage forms are preferred by consumers over powder and other forms. However, many other OTC laxative drug products are available that have the same purpose as psyllium products in granular dosage form but without the associated danger of esophageal obstruction.

FDA finds that the study by Marlett et al. (Ref. 3) submitted by the comment does not contribute any new data to support the safety of psyllium laxative products in granular dosage form. The article reports the results of a placebo-controlled, single-blind study comparing the effectiveness of two psyllium-containing laxatives, a granular dosage form containing psyllium plus senna and a powder dosage form containing psyllium only. FDA believes that any results suggesting that the granular dosage form is more effective than the powder dosage form are confounded by the comparison of products with different active ingredients—psyllium plus senna combined versus psyllium only. FDA reviewed the study for information relating to product safety. Only a few nonserious adverse events are reported for either treatment group. The small number of subjects (42) precludes any conclusions about the safety of either formulation in the general population.

FDA concludes that the submitted foreign safety data (Refs. 4 and 5), a total of 16 events that occurred outside the United States since 1980, do not add any significant evidence to support the safety of psyllium laxatives in granular dosage form. The comment reported three serious and five nonserious cases of dysphagia and/or esophageal obstruction following use of the company's psyllium and senna combination product in granular dosage form. The comment also reported six serious and two nonserious events for its psyllium-only product in granular dosage form. According to the comment, none of these events resulted in death or serious injury, and all of the people recovered. The comment claims these products are leading laxatives in Europe and this small number of serious adverse events demonstrates their safety. FDA finds the data inadequate to make any conclusion on safety. Further, FDA believes the data collected within the United States provides sufficient

basis for a safety concern, without the need for additional consideration of foreign safety data.

III. FDA's Final Conclusions on OTC Laxative Products in Granular Dosage Form Containing Psyllium Ingredients

FDA finds that OTC laxative drug products in granular dosage form containing psyllium present an unnecessary risk of esophageal obstruction and choking. These serious medical emergencies continue to occur despite previous measures taken to promote safe use of these products, including required warning and direction statements in § 201.319 for all OTC drug products containing water-soluble gums, hydrophilic gums, or hydrophilic mucilloids as active ingredients, including psyllium ingredients in granular dosage form. These statements instruct consumers to take adequate fluid and to avoid using the product if the person has previously experienced any difficulty in swallowing.

FDA is reclassifying bulk laxatives in granular dosage form containing psyllium ingredients from Category I (monograph) to Category II (nonmonograph). FDA is adding granular dosage forms containing psyllium ingredients to § 310.545(a)(12)(i) (21 CFR 310.545(a)(12)(i)), which lists those active ingredients currently without adequate data to establish general recognition of safety and effectiveness as a bulk laxative. Concurrently, FDA is revising § 201.319 to specifically exclude laxative drug products in granular dosage form containing psyllium ingredients. FDA concludes that the warnings and directions statements required in § 201.319 are not adequate to provide for the safe and effective use of psyllium products in granular dosage form. This final rule applies to OTC psyllium laxative drug products in granular dosage form that include, but are not limited to, any granules that are: (1) Swallowed dry prior to drinking liquid, (2) dispersed, suspended, or partially dissolved in liquid prior to swallowing, (3) chewed, partially chewed, or unchewed, and then washed down (or swallowed) with liquid, or (4) sprinkled over food.

Part of an August 5, 2003, proposed rule for OTC laxative drug products proposes to exclude psyllium ingredients when contained in granular dosage forms from the list of GRASE bulk-forming psyllium laxative active ingredients in § 334.10 (21 CFR 334.10). We will finalize this part of the proposed rule to exclude psyllium ingredients when we publish the final monograph for OTC laxative drug products.

Accordingly, any OTC laxative drug product in granular dosage form that contains psyllium is considered not GRASE and misbranded under section 502 of the act (21 U.S.C. 352). This type of drug product is considered a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355), and set forth in part 314 of the regulations (21 CFR part 314), is required for marketing. This final rule applies to any OTC psyllium-containing laxative drug product in granular dosage form that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce cannot then be repackaged or relabeled after the effective date of this final rule.

IV. Analysis of Impacts

In accordance with Executive Order 12866, FDA has previously analyzed the potential economic effects of this final rule (68 FR 46133 at 46136). As announced in the proposal, the agency has determined that the rule is not a significant regulatory action as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. Because of the limited number of products affected by this final rule, FDA does not believe that the final rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The purpose of this final rule is to establish conditions under which OTC bulk-forming laxatives in granular dosage form containing psyllium ingredients are not generally recognized as safe and effective. At the time this rule was proposed, FDA's drug listing system (DLS) identified nine marketed OTC laxative drug products in granular dosage form containing psyllium ingredients, and FDA was aware of at least one other product not in its DLS. One manufacturer marketed three stock keeping units (SKUs) (individual products, packages, and sizes) of the granular dosage form. This manufacturer has since reformulated its products and, therefore, will not incur any new costs under this final rule. Two manufacturers marketed two SKUs each, and one manufacturer marketed one SKU. This final rule will result in the reformulation or removal of probably less than 10 products.

- Reformulation Costs

Some manufacturers may elect not to reformulate (i.e., they may elect to discontinue marketing of the product). For those products that need reformulation, the cost can be significant. The cost to reformulate a product will vary greatly depending on the nature of the change in the formulation, the product, the process, and the size of the firm. A manufacturer may elect to change the dosage form of the psyllium product or to substitute other monograph ingredients. This would require the manufacturer to redo the validation (product, process, new supplier), conduct stability tests, change master production records in order to insure compliance with current good manufacturing practice, and, for some dosage forms, conduct palatability tests. (See section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B) and 21 CFR parts 210 and 211.) FDA estimates the cost of reformulation to range from $100,000 to $500,000 per product. Therefore, if 10 products are reformulated, the midpoint of the cost estimate implies total costs of $3,000,000. However, FDA believes

the total costs will be much smaller because not all manufacturers will elect to reformulate and some may choose to discontinue a product line if sales are too low to justify the added cost, and/or they also produce substitute products that do not require reformulation. Also, the major U.S. manufacturer of psyllium laxatives in granular dosage form has already reformulated its products and will not incur any new costs due to this final rule. Manufacturers may also elect to purchase reformulated products from another manufacturer and then be a distributor of that product. Competitive market forces and increased public awareness of a potential safety hazard of these bulk-forming psyllium laxatives in granular dosage form would most likely lead all manufacturers to move to alternative products over time.

• Relabeling Costs

Manufacturers of these products will also incur costs to relabel their products to reflect the new formulation. Estimates of relabeling costs vary greatly and range from $3,000 to $5,000 per SKU depending on whether the products are nationally branded or private label. FDA estimates that manufacturers with more than one affected SKU will likely discontinue one or more SKUs. If some SKUs are discontinued, FDA estimates that only approximately three SKUs will need to be relabeled as a result of reformulation. If these SKUs are relabeled, the total one-time cost of relabeling is about $9,000 (three SKUs x $3,000) to $15,000 (three SKUs x $5,000). This relabeling cost should not be a significant economic impact on a substantial number of small entities.

Some manufacturers may choose to submit an NDA deviation for their psyllium product in accordance with 21 CFR 330.11. Overall, there may be fewer costs incurred by this process than by submission of a full NDA.

Because these products must be manufactured in compliance with pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms currently have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. This rule will not require any new reporting and recordkeeping activities. No additional professional skills are needed.

• Regulatory Alternatives Considered

FDA considered but rejected the following alternatives: (1) Leave these products in the monograph, and (2) an exemption from coverage for small entities. FDA does not believe that these or other alternatives to this final rule would adequately provide for the safe use of these OTC drug products.

Based on the foregoing, FDA does not believe that this final rule would have a significant economic impact on a substantial number of small entities. However, FDA recognizes the uncertainty of its estimates with respect to the number of affected small entities and products, as well as the economic impact of the rule on those small entities. Thus, this economic analysis, together with other relevant sections, serves as FDA's final regulatory flexibility analysis.

V. Paperwork Reduction Act of 1995

FDA concludes that any relabeling required by this final rule is not subject to review by the Office of Management and Budget because it does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the relabeling statements are in the TFM for OTC laxative drug products (50 FR 2124 and 51 FR 35136) and are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) 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.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the act (21 U.S.C. 379r(a)) provides that:

> * * * no State or political subdivision of a State may establish or continue in effect any requirement-- * * * (1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*). * * *

Currently, this provision operates to preempt States from imposing requirements related to the regulation of nonprescription drug products. (See Section 751(b) through (e) of the act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.) This final rule will establish that OTC laxative drug products in granular dosage form containing bulk-forming psyllium ingredients are not GRASE and are misbranded. Although this final rule would have a preemptive effect, in that it would preclude States from promulgating requirements related to OTC laxative drug products in granular dosage form containing psyllium ingredients that are different from or in addition to, or not otherwise identical with the requirements in this final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied preemption may arise. See *Geier* v. *American Honda Co.*, 529 US 861 (2000).

FDA believes that the preemptive effect of the final rule would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** of August 5, 2003 (68 FR 46133). FDA received no comments from any States on the proposed rulemaking.

In addition, on February 13, 2007, FDA's Division of Federal and State Relations provided notice via fax and e-mail transmission to elected officials of State governments and their representatives of national organizations. The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the August 5, 2003, proposed rule and encouraged State and

local governments to review the notice and to provide any comments to the docket (Docket No. 1978N–0036L) by a date 30 days from the date of the notice (i.e., by March 14, 2007), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in Docket No. 1978N–0036L.

In conclusion, FDA believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

VIII. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**), under Docket No. 1978N–0036L, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Adverse Event Reports from 1966 to 2000 for Psyllium Laxative Products (Perdiem, Metamucil, and Serutan) collected by FDA's Office of Compliance, in OTC vol. 090TFM6.
2. Comment No. C00206, Attachment 1.
3. Comment No. C00206, Attachment 3.
4. Comment No. C00206, Attachment 4.
5. Comment No. C00206, Attachment 5.
6. FDA, Office of Postmarketing Drug Risk Assessment (OPDRA)(Project ID (PID) 000607) regarding Psyllium Laxative Products Associated with Esophageal Obstruction and Choking, November 17, 2000, in OTC vol. 090TFM6.
7. Adverse Event Reports from January 1999 to January 2001 for Overnight Relief PERDIEM and Fiber Therapy PERDIEM collected by FDA's Office of Compliance in January 2001, in OTC vol. 090TFM6.
8. FDA, OPDRA Postmarketing Safety Review (PID D020201) regarding Senokot and Psyllium Laxative Products Associated with Esophageal Obstruction and Choking, May 15, 2002, in OTC vol. 090TFM6.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201 and 310 are amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.319 is amended by revising paragraph (a) to read as follows:

§ 201.319 Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including, but not limited to agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B–1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum) as active ingredients; required warnings and directions.

(a) Reports in the medical literature and data accumulated by the Food and Drug Administration indicate that esophageal obstruction and asphyxiation have been associated with the ingestion of water-soluble gums, hydrophilic gums, and hydrophilic mucilloids including, but not limited to, agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B–1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. Esophageal obstruction and asphyxiation due to orally-administered drug products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids as active ingredients are significant health risks when these products are taken without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty in swallowing. Additional labeling is needed for the safe and effective use of any OTC drug product for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient when marketed in a dry or incompletely hydrated form to include, but not limited to, the following dosage forms: Capsules, granules, powders, tablets, and wafers. Granular dosage forms containing psyllium are not generally recognized as safe and effective as OTC laxatives (see § 310.545(a)(12)(i)(B) of this chapter) and may not be marketed without an approved new drug application because the warnings and directions in paragraph (b) of this section have been found inadequate for these products.

* * * * *

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by redesignating paragraph (a)(12)(i) as paragraph (a)(12)(i)(A), by adding paragraph (a)(12)(i)(B), by revising paragraph (d) introductory text and paragraph (d)(1), and by adding paragraph (d)(38) to read as follows:

§ 310.545 Drug products containing active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(i)(B) *Bulk laxatives—Approved as of* March 29, 2007.

Granular dosage forms containing psyllium (hemicellulose), psyllium hydrophilic mucilloid, psyllium seed, psyllium seed (blond), psyllium seed husks, plantago husks, or plantago seed including, but not limited to, any granules that are:

(*1*) Swallowed dry prior to drinking liquid,

(*2*) Dispersed, suspended, or partially dissolved in liquid prior to swallowing,

(*3*) Chewed, partially chewed, or unchewed, and then washed down (or swallowed) with liquid, or

(*4*) Sprinkled over food.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(38) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4)(i), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i)(A), (a)(12)(ii) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), (a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(38) October 1, 2007, for products subject to paragraph (a)(12)(i)(B) of this section.

Dated: March 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5740 Filed 3–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9318]

RIN 1545–BE57

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the capitalization of costs under the simplified service cost method and the simplified production method provided by the Income Tax Regulations. For taxpayers that use the simplified service cost method or the simplified production method, the regulations clarify when self-constructed assets are produced on a routine and repetitive basis in the ordinary course of their businesses.

DATES: *Effective Date:* These regulations are effective on March 29, 2007.

Applicability Date: For dates of applicability, see §§ 1.263A–1(l) and 1.263A–2(f).

FOR FURTHER INFORMATION CONTACT: Steven J. Gee or Donna M. Crawford, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On August 2, 2005, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–121584–05; 70 FR 44535) by cross reference to temporary regulations (TD 9217; 70 FR 44467) (collectively, the 2005 regulations) under section 263A of the Internal Revenue Code (Code). These regulations provide that self-constructed tangible personal property is considered produced on a routine and repetitive basis in the ordinary course of a taxpayer's trade or business for purposes of the simplified service cost method or the simplified production method when units of tangible personal property are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of such assets under section 168(c) is not longer than 3 years.

The IRS and Treasury Department issued Rev. Proc. 2006–11 (2006–3 IRB 309), see § 601.601(d)(2)(ii)(*b*), which provides procedures by which a taxpayer changing its method of accounting to comply with § 1.263A–1T or § 1.263A–2T (issued under TD 9217) for its first taxable year ending on or after August 2, 2005, may request the consent of the Commissioner utilizing either the administrative procedures for requesting the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 CB 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 CB 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*)), or the administrative procedures for obtaining the automatic consent of the Commissioner (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 CB 327), as modified and clarified by Announcement 2002–17 (2002–1 CB 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 CB 696), and amplified, clarified, and modified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*)). These final regulations have been revised to be consistent with the procedures provided in Rev. Proc. 2006–11.

One written comment was received in response to the 2005 regulations. No requests to speak at a public hearing were received, and no hearing was held. After consideration of the comment, the proposed regulations under section 263A are adopted by this Treasury decision.

Summary of Comments

A commentator expressed the belief that the categories of property, as described in Notice 88–86 (1988–2 CB 401), see § 601.601(d)(2)(ii)(*b*), eligible for the simplified service cost method and the simplified production method represent a reasonable balance between technical accuracy and simplification. The commentator opposed the requirements in the 2005 regulations that, to qualify for the category of property ''produced on a routine and repetitive basis,'' the property must be mass-produced using standardized designs and assembly line techniques, and have an applicable recovery period of not longer than 3 years. The commentator argued that, with respect to electric utility companies, there is no sound tax policy to support limiting the application of the methods based on the manner in which self-constructed assets are produced or the number of years over which the self-constructed assets are depreciated. The commentator further stated that the preamble to the 2005 regulations did not explain why there may be a distortion of income from the use of the simplified methods, and why such a distortion justified distinctions based on the method of manufacturing and the recovery lives of property.

The simplified methods are less accurate and less precise than a facts and circumstances method and, thus, may capitalize more or less costs than a facts and circumstances method. Therefore, the simplified methods may cause distortions when compared to a more accurate facts and circumstances method. The amount of distortion may not be very large for assets that are mass produced, because the underlying assumption of the simplified methods that costs are incurred ratably across all the assets may be appropriate. Additionally, any distortion caused by the lack of precision quickly reverses if the assets to which the methods may be applied typically have a high turnover rate, that is, a short recovery period. Inventory production frequently meets one or both of these two criteria. The IRS and Treasury Department provided the simplified methods for inventory because the reduction in the burdens of complying with the uniform capitalization rules generally outweighed the possible distortion within the simplified methods.

Under temporary regulations published in the **Federal Register** on March 30, 1987 (TD 8131, 1987–1 CB 98, [52 FR 10052]) (1987 regulations), the simplified methods were available only to inventory and non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The preamble to the 1987 regulations stated that the methods were ''designed to alleviate the administrative burdens of complying with [section 263A] where mass production of assets occurs on a repetitive and routine basis, with a typically high 'turnover' rate for the produced assets.'' The preamble to the 1987 regulations stated that the simplified methods could not be utilized with respect to self-constructed assets because the simplified methods were not appropriate for use ''in accounting for casual or occasional production of property.''

In response to comments suggesting that the categories of property eligible for the simplified service cost method and the simplified production method be expanded to include other categories of property with similar characteristics, Notice 88–86 expanded the availability of the methods, in relevant part, to ''property constructed by a taxpayer for use in its trade or business if, in the ordinary course of its production activities, the taxpayer produces such

property on a routine and repetitive basis (that is, the taxpayer produces numerous items of such property within a taxable year).'' The final regulations published in the **Federal Register** on August 9, 1993 (TD 8482, 1993–2 CB 77, [58 FR 42198]) included the new category from Notice 88–86. The addition of certain self-constructed assets was merely intended to add another category of property with characteristics similar to inventory (mass produced or high turnover) and was not an indication that the application of the simplified methods to the production, whether or not casual or occasional, of all self-produced assets was considered appropriate.

The IRS and Treasury Department continue to believe that to prevent distortion when applied to self-constructed property, the simplified service cost method and simplified production method should be limited to property that is mass produced and has a typically high ''turnover'' rate. Accordingly, the final regulations do not incorporate the commentator's suggestions. The regulations clarify, however, that property with a typically high ''turnover'' rate includes materials and supplies that are used and consumed within three years of being produced.

The IRS and Treasury Department recognize that the application of the uniform capitalization requirements to self-constructed property can be burdensome, particularly to small taxpayers. The IRS and Treasury Department will consider proposing simplified methods for self-constructed property for small taxpayers in future guidance under section 263A.

Additionally, a commentator indicated that for taxpayers that have both property that is eligible for the simplified methods and property that is ineligible for the simplified methods, the regulations do not provide specific procedures to determine how to allocate service costs and other indirect costs between the eligible property and the ineligible property. The IRS and Treasury Department agree that service costs and other indirect costs must be allocated to ineligible property as well as eligible property. However, prescribing specific procedures and methods for these allocations is beyond the scope of these regulations. The IRS and Treasury Department may address this issue in future guidance.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Scott Rabinowitz of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.263A–1 is amended by revising paragraphs (h)(2)(i)(D), (k) and (l) to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis—(1) In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in § 1.263A–10(c)) are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and either the applicable recovery period of the property determined under section 168(c) is not longer than 3 years or the property is a material or supply that will be used and consumed within 3 years of being produced. For purposes of this paragraph (h)(2)(i)(D), the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of § 1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph (h)(2)(i)(D).

(2) Examples. The following examples illustrate this paragraph (h)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

* * * * *

(k) *Change in method of accounting*—(1) *In general.* A change in a taxpayer's treatment of mixed service costs to comply with paragraph (h)(2)(i)(D) of this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations under those sections apply. See § 1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 CB 327), as modified and clarified by Announcement 2002–17 (2002–1 CB 561), modified and

amplified by Rev. Proc. 2002–19 (2002–1 CB 696), and amplified, clarified, and modified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, ''Application for Change in Accounting Method,'' the designated number for the automatic accounting method change authorized by this paragraph (k) is ''95.'' If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. Alternatively, notwithstanding the provisions of any administrative procedures that preclude a taxpayer from requesting the advance consent of the Commissioner to change a method of accounting that is required to be made pursuant to a published automatic change procedure, for its first taxable year ending on or after August 2, 2005, a taxpayer may request the advance consent of the Commissioner to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (5) of this section, for obtaining the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 CB 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 CB 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (k)(3) and (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method.

(2) *Scope limitations.* Any limitations on obtaining the automatic consent or advance consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (k) to comply with paragraph (h)(2)(i)(D) of this section does not receive audit protection if its method of accounting for mixed service costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to paragraph (h)(2)(i)(D) of this section requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to paragraph (h)(2)(i)(D) of this section.

(5) *Time for requesting change.* Notwithstanding the provisions of § 1.446–1(e)(3)(i) and any contrary administrative procedure, a taxpayer may submit a request for advance consent to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005, on or before the date that is 30 days after the end of the taxable year for which the change is requested.

(l) *Effective date.* Paragraphs (h)(2)(i)(D), (k), and (l) of this section apply for taxable years ending on or after August 2, 2005.

§ 1.263A–1T [Removed]

■ **Par. 3.** Section 1.263A–1T is removed.

■ **Par. 4.** Section 1.263A–2 is amended by revising paragraphs (b)(2)(i)(D), (e) and (f) to read as follows:

§ 1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis—(1) In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in § 1.263A–10(c)) are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and either the applicable recovery period of the property determined under section 168(c) is not longer than 3 years or the property is a material or supply that will be used and consumed within 3 years of being produced. For purposes of this paragraph (b)(2)(i)(D), the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of § 1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph (b)(2)(i)(D).

(2) Examples. The following examples illustrate this paragraph (b)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

* * * * *

(e) *Change in method of accounting—*(1) *In general.* A change in a taxpayer's treatment of additional section 263A costs to comply with paragraph (b)(2)(i)(D) of this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations under those sections apply. See § 1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 CB 327), as modified and clarified by Announcement 2002–17 (2002–1 CB 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 CB 696), and amplified, clarified, and modified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, ''Application for Change in Accounting Method,'' the designated number for the automatic accounting method change authorized by this paragraph (e) is ''95.'' If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. Alternatively,

notwithstanding the provisions of any administrative procedures that preclude a taxpayer from requesting the advance consent of the Commissioner to change a method of accounting that is required to be made pursuant to a published automatic change procedure, for its first taxable year ending on or after August 2, 2005, a taxpayer may request the advance consent of the Commissioner to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (5) of this section, for obtaining the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 CB 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 CB 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 CB 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (e)(3) and (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method.

(2) *Scope limitations.* Any limitations on obtaining the automatic consent or advance consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (e) to comply with paragraph (b)(2)(i)(D) of this section does not receive audit protection if its method of accounting for additional section 263A costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to paragraph (b)(2)(i)(D) of this section requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to paragraph (b)(2)(i)(D) of this section.

(5) *Time for requesting change.* Notwithstanding the provisions of § 1.446–1(e)(3)(i) and any contrary administrative procedure, a taxpayer may submit a request for advance consent to change its method of accounting to comply with paragraph (b)(2)(i)D) of this section for its first taxable year ending on or after August 2, 2005, on or before the date that is 30 days after the end of the taxable year for which the change is requested.

(f) *Effective date.* Paragraphs (b)(2)(i)(D), (e), and (f) of this section apply for taxable years ending on or after August 2, 2005.

§ 1.263A–2T [Removed]

■ **Par. 5.** Section 1.263A–2T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 20, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–5732 Filed 3–28–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9313]

RIN 1545–BG29

Corporate Reorganizations; Additional Guidance on Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains correction to temporary regulations (TD 9313) that were published in the **Federal Register** on Thursday, March 1, 2007 (72 FR 9262) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction.

DATES: This amendment is effective March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subjects of this correction are under section 368 of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (TD 9313) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.368–2T is amended by revising paragraph (l)(2)(iv) to read as follows:

§ 1.368–2T Definition of terms (temporary).

* * * * *

(l) * * *

(2) * * *

(iv) *Exception.* This paragraph (l)(2) of this section does not apply to a transaction otherwise described in § 1.358–6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

* * * * *

LaNita Van Dyke,

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

[FR Doc. E7–5603 Filed 3–28–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0774; FRL–8284–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to Indiana's State Implementation Plan (SIP) submitted on August 25, 2006, revising its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). The rationale for approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective May 29, 2007, unless EPA receives adverse comments by April 30, 2007. If adverse comments are received, EPA will publish a timely withdrawal of

the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0774, by one of the following methods:

1. 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.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0774. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy 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 legal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information
II. What Is Required by the Clean Air Act and How Does It Apply to Indiana?
III. What Change Is Indiana Requesting?
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. General Information

This rulemaking applies to stationary sources located in ozone nonattainment areas. It requires sources to submit emission statement data to the Indiana Department of Environmental Management (IDEM) on an annual basis. This collected emission data can help the IDEM develop a complete and accurate emission inventory for air quality planning purposes at the State, and also meet EPA emission reporting requirements.

II. What Is Required by the Clean Air Act and How Does It Apply to Indiana?

Emission Statements (Annual Reporting)

Section 182(a)(3)(B) of the CAA requires each state to submit revisions to its State implementation plan (SIP) to require that the owner or operator of each stationary source of oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) in nonattainment areas prepare and submit emission statements each year showing actual emissions of those pollutants. This requirement applies to all ozone nonattainment areas covered under subpart 2 of part D of Title I of the CAA, regardless of classification (marginal, moderate, etc.) In such nonattainment areas, facilities which emit VOC or NO_X (on a plant-wide basis) in amounts of 25 tons per year or more into the ambient air must submit an emission statement to the State.

On June 10, 2002 (67 FR 39602), EPA amended the list of pollutants to be reported on emission statements, adding particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM 2.5) and ammonia (NH3).

On April 30, 2004, EPA published its Phase 1 rule to implement the 8-hour ozone National Ambient Air Quality Standard (NAAQS) (69 FR 23951). On this same date, EPA set forth nonattainment and attainment designations for the 8-hour ozone NAAQS (69 FR 23858).

EPA has determined that the emission statement program requirements previously applicable for the 1-hour ozone NAAQS apply in the same manner for the 8-hour NAAQS. See May 3, 2006, memorandum from Thomas C. Curran, Director, Air Quality Assessment Division, to Regional Air Division Directors, entitled ''Emission Statement Requirement Under 8-hour Ozone NAAQS implementation.'' Thus, the requirement for emission statements under section 182(a)(3)(B) applies to newly-designated subpart 2 ozone nonattainment areas. Also, those areas designated nonattainment for ozone under the 1-hour ozone NAAQS and then designated nonattainment under the 8-hour ozone NAAQS, regardless of classification under subpart 2 of part D of Title I of the Act, remain subject to the emission statement requirement of section 182(a)(3)(B).

Indiana's Current SIP

On June 10, 1994, EPA approved rule 2–6 of Title 326 of the Indiana Administrative Code (IAC), as meeting the emission statement program requirements of section 182(a)(3)(B) of the CAA. See 59 FR 29956. Subsequently, EPA redesignated a number of counties subject to the emission statement program to attainment for the 1-hour ozone standard. See, e.g., 59 FR 5439

(Indianapolis) and 62 FR 64725 (Evansville). On October 29, 2004, EPA approved a revision to rule 2–6 to reflect these changes. 69 FR 63069. As a result, the emission statement program requirements applied to stationary sources in Lake and Porter counties.

On April 30, 2004, EPA designated Lake, Porter, and LaPorte Counties as nonattainment for the 8-hour ozone standard. 69 FR 23858.

III. What Change Is Indiana Requesting?

Indiana is requesting that EPA approve the revisions to the existing emission reporting rule, 326 IAC 2–6, to be consistent with the emission statement program requirements for stationary sources in section 182(a)(3)(B) of the CAA. Since, under the existing Federally approved SIP for Indiana, the emission statement program requirements for the 1-hour ozone NAAQS apply in the same manner as for the 8-hour NAAQS, the emission statement program requirements will remain applicable to stationary sources in Lake and Porter counties. The requirement for emission statements under section 182(a)(3)(B) will also apply to LaPorte County, the only newly designated nonattainment area in Indiana under subpart 2 of the 8-hour ozone NAAQS.

Indiana is also requesting that EPA approve the addition of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM 2.5) and ammonia (NH3) to the list of pollutants to be reported on the emission statement.

IV. What Action Is EPA Taking?

EPA has determined that the Indiana program contains the necessary applicability, compliance and reporting provisions necessary to meet the requirements for an emission statement program for all ozone nonattainment areas for the 8-hour ozone standard under subpart 2 of the CAA. The revision to Indiana's revised emission statement program will now include stationary sources in LaPorte County. Therefore, EPA is approving the revisions to the emission reporting requirements of 326 IAC 2–6 to satisfy the Federal requirements for an emission statement program as part of the SIP. EPA is also approving Indiana's request to include PM 2.5 and NH3 to the list of pollutants to be reported in emission statements.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 29, 2007 without further notice unless we receive relevant adverse written comments by April 30, 2007. 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. The EPA 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 comments, this action will be effective May 29, 2007.

V. 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 is not economically significant.

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 Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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. section 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 May 29, 2007. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: February 27, 2007.

Steve Rothblatt,

Acting 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 P—Indiana

■ 2. Section 52.770 is amended by removing and reserving paragraphs (c)(91) and (c)(166), and adding paragraph (c)(178) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(178) On August 25, 2006, Indiana submitted final adopted revisions to its emission reporting requirement rules as a revision to the Indiana State Implementation Plan.

(i) *Incorporation by reference.* Indiana Administrative Code Title 326: Air Pollution Control Board, Article 2: Permit Review Rules, Rule 6 Emission Reporting, Section 1: Applicability, Section 3: Compliance schedule, and Section 4: Requirements. Approved by the Attorney General June 29, 2006. Approved by the Governor July 13, 2006. Filed with the Publisher July 14, 2006. Published on the Indiana Register Web site August 9, 2006, Document Identification Number (DIN):20060809–IR–326050078FRA. Effective August 13, 2006.

[FR Doc. E7–5655 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–8293–1]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, IL Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule on December 27, 2006, to extend the reformulated gasoline program to the Illinois portion of the St. Louis Illinois-Missouri ozone nonattainment area effective as of May 1, 2007. However, we received an adverse comment during the 30 day comment period and are now withdrawing that direct final rule.

DATES: As of March 29, 2007, EPA withdraws the direct final rule published at 71 FR 77615, on December 27, 2006.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson at (202) 343–9219.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule for ''Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, Illinois Ozone Nonattainment Area.'' We published the direct final rule on December 27, 2006 (71 FR 77615), that would have approved the State of Illinois's request to opt-in to the Federal Reformulated Gasoline Program effective as of May 1, 2007. That action would have amended our regulations to make the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area a covered area and prohibit the sale of conventional gasoline. We stated in that **Federal Register** document that if we received adverse comment by January 26, 2007, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received an adverse comment.

We will address the comment in a subsequent final action based on the parallel proposal also published on December 27, 2006 (71 FR 77690). As stated in the parallel proposal, we will not institute a second comment period on this action.

Dated: March 22, 2007.

Stephen L. Johnson,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

§ 80.70 [Amended].

■ Accordingly, the amendment to 40 CFR 80.70 which was published in the **Federal Register** on December 27, 2006 (71 FR 77615) is withdrawn as of March 29, 2007.

[FR Doc. E7–5808 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2003–0063; FRL–7699–5]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances and Notification on Certain Substances for Which Significant New Use Rules are Not Being Issued

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 65 chemical substances which were the subject of premanufacture notices (PMNs). Thirteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 65 chemical substances for an activity that is designated as a significant new use by this rule to notify

EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. This direct final rule also provides notification on two substances for which EPA has decided not to issue significant new use rules at this time.

DATES: The effective date of this rule is May 29, 2007 without further notice, unless EPA receives adverse or critical comments, or notice of intent to submit adverse or critical comments before April 30, 2007. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on April 12, 2007.

If EPA receives adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before April 30, 2007, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0063, 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2003–0063. 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–2003–0063. 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's index available at *http://www.regulations.gov*. 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: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address: *chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., Chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance

that is the subject of this rule on or after April 30, 2007 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Additional rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR part 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, the Agency is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy on import certification appears at 40 CFR part 707, subpart B.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for 65 chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name if the specific name is claimed as CBI).
- CAS number (if assigned for non-confidential chemical identities).
- Basis for the section 5(e) consent order, or, for non-5(e) SNURs, the basis for the SNUR.
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VI. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The specific activities designated as significant new uses are listed in the regulatory text section of 40 CFR part 721, subpart E. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

This rule includes SNURs on 13 PMN substances that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) wherein EPA determined that activities associated with the PMN substances may present unreasonable risk to health or the environment. The consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these substances are promulgated pursuant to 40 CFR 721.160, and are based on and consistent with the provisions in the underlying consent orders. The SNURs designate as a ''significant new use'' the absence of the protective measures required in the consent order.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via

inhalation exposure, the underlying section 5(e) consent order usually requires, among other things, that potentially exposed employees must wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in section 5(e) consent orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCELs provisions currently exist in 40 CFR part 721, subpart B for SNURs. Therefore, for these cases, the individual SNURs in subpart E state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order for the same chemical substance for SNURs.

This rule also includes SNURs on 52 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under section 5(e) of TSCA. EPA, however, does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so called ''Non-5(e) SNURs'' are promulgated pursuant to 40 CFR 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under 40 CFR 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–97–415

Chemical name: 2-Thiazolidinone.
CAS number: 2682–49–7.
Effective date of section 5(e) consent order: April 20, 2000.
Basis for section 5(e) consent order: The PMN states that the substance will be used as an intermediate. The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment. To protect against this risk, the consent order requires worker protection and hazard communication and restricts disposal, water releases, and aggregate manufacture/importation volume of the PMN substance. It also prohibits use of the PMN substance other than as an intermediate and prohibits domestic manufacturing, processing, or use of the PMN substance as a powder. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: EPA has identified health concerns for high acute toxicity and signs of neurotoxic effects based on test data for the PMN substance. EPA also has concerns for chronic effects and systemic, developmental, and maternal toxicity based on test data on a structurally similar substance. The NCEL is 0.7 mg/m^3 as an 8-hour time-weighted average. EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 300 parts per billion (ppb) of the PMN substance in surface waters based on test data on a structurally similar substance.
Recommended testing: EPA has determined that the following test would help characterize the human health effects of the PMN substance: A combined repeated dose toxicity with the reproductive/developmental toxicity screening test (oral route) (OPPTS 870.3650 test guideline) with a neurotoxicity functional observational battery (National Technical Information Service (NTIS) PB 91–154617) and a histopathologic examination extended to include the blood, liver, kidney, brain, and spinal cord on the PMN substance to help characterize neurotoxic, systemic, reproductive, and developmental effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test. In addition, EPA has determined that a porous pot test (OPPTS 835.3220 test guideline), a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10002.

PMN Numbers P–98–625/626/627/628/629 and **P–00–614/617**

Chemical name: Manganese heterocyclic tetraamine complex (generic).

CAS number: Not available.
Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be in commercial research and development. EPA has identified health concerns for chronic organ effects based on data on a structurally similar substance. Since significant worker exposure is unlikely at the production volume identified in the PMNs, EPA has not determined that the proposed manufacture, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that a manufacture or importation volume greater than 10,000 kilograms/year of any one of the PMN substances may result in serious chronic effects. Based on this information, each of the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the results of a 90-day oral toxicity study (OPPTS 870.3100 test guideline) would help characterize the human health effects of the PMN substances.

CFR citation: 40 CFR 721.10003.

PMN Number P–98–1181

Chemical name: 2-Butenoic acid, 4,4′-[(dibutylstannylene)bis(oxy)]bis[4-oxo-, (2Z,2′Z)-, di-C_{8-10}-isoalkyl esters, C_9-rich.

CAS number: 247041–56–1.
Basis for action: The PMN states that the substance will be used as a polyvinyl chloride stabilizer. EPA has identified concerns for corrosion to skin, eyes, and mucuous membranes, neurotoxicity, blood toxicity, liver toxicity, immunosupression, reproductive toxicity, and adrenal effects based on analogy to organotins. As described in the PMN, significant worker exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that uses of the substance in a solid form, involving an application method that generates a vapor, mist, or aerosol, or where there is potential dermal exposure without the use of impervious gloves, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the results of a 90-day

oral toxicity study (OPPTS 870.3100 test guideline) and a neurotoxicity screening test (OPPTS 870.6200 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10004.

PMN Number P–98–1182

Chemical name: 2-Butenoic acid, 4,4′-[(dibutylstannylene)bis(oxy)]bis[4-oxo-, (2Z,2′Z)-, di-C_{9-11}-isoalkyl esters, C_{10}-rich.

CAS number: Not available.
Basis for action: The PMN states that the substance will be used as a polyvinyl chloride stabilizer. EPA has identified concerns for corrosion to skin, eyes, and mucuous membranes, neurotoxicity, blood toxicity, liver toxicity, immunosupression, reproductive toxicity, and adrenal effects based on analogy to organotins. As described in the PMN, significant worker exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that uses of the substance in a solid form, involving an application method that generates a vapor, mist, or aerosol, or where there is potential dermal exposure without the use of impervious gloves, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the results of a 90-day oral toxicity study (OPPTS 870.3100 test guideline) and a neurotoxicity screening test (OPPTS 870.6200 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10005.

PMN Number P–99–511

Chemical name: Mixed metal oxide (generic).

CAS number: Not available.
Basis for action: The PMN states that the substance will be used as an additive for coatings. Based on data for a similar substance, EPA has identified concerns for cancer, immunotoxicity, and lung toxicity. As described in the PMN, significant inhalation exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that a manufacture/importation volume greater than 60,000 kilograms/year of the PMN substance may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a bacterial reverse mutation test (OPPTS 870.5100 test guideline) and a mammalian erythrocyte micronucleus test (intraperitoneal route) (OPPTS 870.5395 test guideline) with special attention to histopathology of the lung tissues and organs of the immune systems (spleen, thymus, bone marrow) would help characterize the human health effects of the PMN substance. If the results of the recommended tests indicate that the PMN substance has carcinogenic potential, a carcinogenicity study (OPPTS 870.4200 test guideline) would help further characterize the health effects.

CFR citation: 40 CFR 721.10006.

PMN Number P–00–11

Chemical name: Alcohols, C_{12-14} -secondary, ethoxylated propoxylated.
CAS number: 103331–86–8.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a household cleaning agent additive. Based on analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at concentrations above 50 ppb in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations above 50 ppb. Thus, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in surface water concentrations above 50 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10007.

PMN Numbers P–00–1121/1122/1123/1124/1125/1126

Chemical names: (P–00–1121) Manganese strontium oxide ($MnSrO_3$); (P–00–1122) Manganese yttrium oxide ($MnYO_3$); (P–00–1123) Barium manganese oxide ($BaMnO_3$); (P–00–1124) Barium calcium manganese strontium oxide; (P–00–1125) Manganate (MnO_2^{1-}), calcium (2:1); and (P–00–1126) Manganese yttrium oxide (Mn_2YO_5).

CAS numbers: (P–00–1121) 12163–45–0, (P–00–1122) 12032–75–6, (P–00–1123) 12230–80–7, (P–00–1124) 359427–90–0, (P–00–1125) 12049–47–7, and (P–00–1126) 12438–71–0.
Effective date of section 5(e) consent order: March 23, 2001.
Basis for section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be as pigments. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to human health and the environment. To protect against this risk, the consent order requires hazard communication and restricts aggregate manufacture/importation volume, particle size and water releases of the PMN substances. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: EPA has health concerns for neurotoxicity and mutagenicity for the PMN substances based on exposure to manganese; concerns for lung toxicity, fibrosis, and possible cancer of the lungs due to potential exposure to the particulate form of the substances; and concern for lung effects through lung overload if respirable particles are inhaled. Based on test data on structurally similar substances, EPA is concerned that toxicity to aquatic organisms for each of these PMN substances may occur at concentrations as low as 100 ppb in surface waters. Further, the Agency has determined that the PMN substances may be persistant, bioaccumulative, and toxic based on physical/chemical properties of the substances, consistent with the New Chemical Program's Persistant, Bioaccumulative, and Toxic (PBT) Category (64 FR 60194, November 4, 1999) (FRL–6097–7). Because of the potential PBT nature of the PMN substances, bioaccumulation and the potential for eventual exposure to humans and wildlife could result from exposure to concentrations below 100 ppb. Therefore, to adequately mitigate this concern, EPA has decided to limit surface water concentrations resulting from manufacturing, processing, or use to 1 ppb or less for each of the PMN substances.

Recommended testing: EPA has determined that a fish bioconcentration factor (BCF) test (OPPTS 850.1730 test guideline (public draft)) would help characterize the environmental effects of the substances. The PMN submitter has

agreed not to exceed the production volume limit without performing the fish BCF test on P–00–1122 or P–00–1126. EPA has determined that a 90-day inhalation toxicity study in rats with a 60-day holding period with special attention to the histopathology of the lungs (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substances. Based on the results of the 90-day study, a 2-year inhalation carcinogenicity test (OPPTS 870.4200 test guideline) may be warranted.

CFR citations: 40 CFR 721.10008 (P–00–1121); 40 CFR 721.10009 (P–00–1122); 40 CFR 721.10010 (P–00–1123); 40 CFR 721.10011 (P–00–1124); 40 CFR 721.10012 (P–00–1125); and 40 CFR 721.10013 (P–00–1126).

PMN Number P–01–109

Chemical name: Halogenated naphthalic anhydride (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a dye intermediate. Based on toxicity data on structurally similar chemicals, EPA expects toxicity to aquatic organisms to occur at concentrations as low as 20 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the following testing would help characterize the PMN substance: An algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)).

CFR citation: 40 CFR 721.10014.

PMN Number P–01–110

Chemical name: Halogenated benzimidazole (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a dye intermediate. Based on Structure Activity Relationships (SAR) analysis, EPA expects toxicity to aquatic organisms to occur at concentrations as low as 1 ppb of the PMN substance in surface waters. In addition, EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and toxic based on physical/chemical properties of the PMN substance, consistent with the New Chemical Program's PBT Category (64 FR 60194, November 4, 1999). As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release of the PMN substance to surface waters may cause significant adverse environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the following tiered testing would help characterize the PMN substance: Tier 1 - Melting point/melting range test (OPPTS 830.7200 test guideline) and an octanol water partition coefficient/K_{ow} test (OPPTS 830.7550 test guideline); Tier 2 - Activated sludge sorption isotherm (OPPTS 835.1110 test guideline) or modified coagulation-flocculation jar test of water (D2034–80); Tier 3 - An algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)) and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)); Tier 4 - tiered testing as described in the New Chemicals Program's PBT Category (excluding the octanol water partition coefficient/K_{ow} test already recommended in Tier 1).

CFR citation: 40 CFR 721.10015.

PMN Number P–01–111

Chemical name: Dibenzimidazothianaphthalene (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a fluorescent dye. Based on toxicity data on structurally similar chemicals, EPA expects chronic toxicity to aquatic organisms to occur at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the following tiered testing would help characterize the PMN substance: Tier 1 - Activated sludge sorption isotherm test (OPPTS 835.1110 test guideline) or modified coagulation-flocculation jar test of water (D2034–80); Tier 2 - An algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)); and Tier 3 - A daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) and a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)).

CFR citation: 40 CFR 721.10016.

PMN Numbers P–01–257/258/259 and P–01–261

Chemical name: Amine terminated bisphenol A diglycidyl ether polymer (generic).

CAS number: Not available.

Basis for action: The PMNs state that the substances will be used as epoxy resin curing agents. Based on analogy to structurally similar polycationic polymers, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 40 ppb in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), and a fish acute toxicity test mitigated by humic acid (OPPTS 850.1085 test guideline (public draft)) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10017.

PMN Number P–01–442

Chemical name: Calcium hydroxide oxide silicate ($Ca_6(OH)_2O_2(Si_2O_5)_3$).

CAS number: 13169–90–9.

Basis for action: The PMN states that the substance will be used as a filler to reinforce resins, an additive for resins, and a filter medium. Based on test data on this chemical and structurally similar compounds, EPA has identified

human health concerns for cancer and toxicity to the respiratory tract, lungs, respiratory system, and liver to workers exposed via inhalation. As described in the PMN, significant worker exposure is unlikely. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture, uses other than as described in the PMN, or processing or use as a powder resulting in significant worker inhalation exposure may cause significant adverse human health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10018.

PMN Number P–01–563
Chemical name: Benzoic acid, 2-chloro-5-nitro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester.
CAS number: 174489–76–0.
Basis for action: The PMN states that the substance will be used as a chemical intermediate. Based on submitted test data and on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 3 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), and an aerobic aquatic biodegradation test with an analytical methodology to identify the isononyl phenol degradation product (OPPTS 835.3100 test guideline) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10019.

PMN Number P–01–564
Chemical name: Benzoic acid, 5-amino-2-chloro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester.
CAS number: 174489–43–1.
Basis for action: The PMN states that the substance will be used as a chemical intermediate. Based on structural analogy to anilines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), and an aerobic aquatic biodegradation test with an analytical methodology to identify the isononyl phenol degradation product (OPPTS 835.3100 test guideline) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10020.

PMN Number P–01–764
Chemical name: Magnesium potassium titanium oxide.
*CAS number:*39290–90–9.
Effective date of section 5(e) consent order: July 29, 2002.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a physical characteristics modifier for industrial use in certain solid composite articles. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires worker protection and hazard communication and restricts the aggregate manufacture/importation volume of the PMN substance. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: Based on test data on titanium dioxide, EPA has health concerns for lung toxicity, including lung overload and oncogenicity, with inhalation exposure. The NCEL is 5 mg/m^3 as an 8-hour time-weighted average.
Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) and possibly a 2-year carcinogenicity study (OPPTS 870.4200 test guideline) would help characterize the human health effects of the PMN substance. The consent order contains two production volume limits. The PMN submitter agreed not to exceed the first production volume limit without performing the 90-day inhalation toxicity study and not to exceed the second production volume limit without performing the 2-year carcinogenicity study if warranted based on the results of the first study.
CFR citation: 40 CFR 721.10021.

PMN Numbers P–01–769/770/771/772
Chemical names: (P–01–769) Benzenamine, *N*-phenyl-, ar-(C_9-rich C_{8-10}-branched alkyl) derivs; (P–01–770) Benzenamine, *N*-phenyl-, ar, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs; (P–01–771) 10H-Phenothiazine, ar-(C_9-rich C_{8-10}-branched alkyl) derivs; and (P–01–772) 10H-Phenothiazine, ar, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs.
CAS numbers: (P–01–769) 333955–69–4, (P–01–770) 333955–70–7, (P–01–771) 333955–79–6, and (P–01–772) 333955–80–9.
Basis for action: The PMNs state that the substances will be used as antioxidants for lubricating oils. EPA has identified human health and environmental concerns because the PMN substances may be persistent, bioaccumulative, and toxic, based on submitted test data and physical/chemical properties of the PMN substances, consistent with the New Chemical Program's PBT Category (64 FR 60194, November 4, 1999). As described in the PMNs, significant worker exposure is unlikely and the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substances may present an unreasonable risk. EPA has determined, however, that use of the PMN substances other than as described in the PMNs resulting in release to water may cause serious chronic human health effects and significant environmental effects, since the PMN substances have been characterized by EPA as a PBT. Based on this information, the PMN substances meet the concern criteria at § 721.170 (b)(3)(i), (b)(4)(ii), and (b)(4)(iii).
Recommended testing: EPA has determined that the results of testing Tiers 2 and 3 as described in the New

Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substances.
CFR citations: 40 CFR 721.10022 (P–01–769); 40 CFR 721.10023 (P–01–770); 40 CFR 721.10024 (P–01–771); and 40 CFR 721.10025 (P–01–772).

PMN Number P–01–856

Chemical name: Cashew, nutshell liq., ethoxylated.

CAS number: 350820–95–0.
Effective date of section 5(e) consent order: July 5, 2002.
Basis for section 5(e) consent order: The PMN states that the substance will be used as a pigment dispersant. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order restricts molecular weight and composition of the PMN substance. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: Based on test data on structurally similar nonionic surfactants, particularly alkyl ethoxylate, EPA has concerns that the environmental toxicity of the PMN substance varies depending on the average number of moles of the ethoxy. As the number of moles of ethoxy decreases, the aquatic toxicity of the substance increases. For this PMN substance, the average number of moles may vary. When the average number of moles of the ethoxy group is 80, EPA expects toxicity to aquatic organisms to occur at concentrations as low as 1,000 ppb.
Recommended testing: The Agency has determined that the results of a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize possible environmental effects of the substance. The tests should be conducted on the PMN substance with less than 55 moles of the ethoxy group or with an average molecular weight less than 2,700 daltons.

CFR citation: 40 CFR 721.10026.

PMN Number P–01–862

Chemical name: Ethoxylated alkylsulfate, substituted alkylamine salt (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a processing aid. Based on analogy to cationic surfactants and similar substances, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations as low as 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in significant release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), and a ready biodegradability test (OPPTS 835.3110 test guideline) would help characterize the chronic environmental effects and the fate in the environment of the PMN substance. After this testing is completed, if the results of the testing and projected environmental risk warrant it, a porous pot test (OPPTS 835.3220 test guideline) or modified semi-continuous activated sludge (SCAS) test (OPPTS 835.3210 test guideline) would further characterize the environmental fate of this substance.
CFR citation: 40 CFR 721.10027.

PMN Numbers P–01–901 and P–01–902

Chemical name: Disubstituted benzene metal salt (generic).
CAS number: Not available.
Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as a polymer additive. Based on test data and analogy to phenols and hydroquinones/quinones, EPA has concerns for dermal corrosivity, acute toxicity, kidney and liver effects, mutagenicity, carcinogenicity, neurotoxicity, developmental toxicity, depigmentation of skin, thyroid effects, and sensitization. Also, based on analogy to phenols and hydroquinones/quinones, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb in surface waters. As described in the PMNs, significant worker exposure is not expected as workers wear impervious personal protective equipment and significant environmental exposure is not expected as the substances are not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances without workers wearing impervious gloves or uses other than as described in the PMNs could result in serious health effects or significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)) would help characterize the environmental effects of the PMN substances. EPA has also determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects.
CFR citation: 40 CFR 721.10028.

PMN Number P–01–918

Chemical name: Isocyanate compound, modified with methoxysilane (generic).
CAS number: Not available.
Effective date of section 5(e) consent order: May 30, 2002.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a sealant. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires worker protection and hazard communication and restricts the aggregate manufacture/importation volume of the PMN substance. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: Based on test data on diisocyanates, the Agency has concern for dermal and respiratory sensitization and pulmonary toxicity. The NCEL is 0.05 mg/m^3 or 0.005 ppm as an 8-hour time-weighted average.
Recommended testing: EPA has determined that the results of a skin sensitization study (OPPTS 870.2600 test guideline) and a 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help characterize the human health effects of the substance.
CFR citation: 40 CFR 721.10029.

PMN Number P–01–919

Chemical name: Pyrimido[5,4-g]pteridine-2,4,6,8-tetramine, 4-methylbenzenesulfonate, base-hydrolyzed.

CAS number: 346709–25–9.
Basis for action: The PMN states that the substance will be used as a pigment for thermoplastic polymers. Based on analogy to structurally similar *N*-heterocyclic chemicals, EPA has concerns for potential developmental toxicity from exposure to the PMN material. Significant worker exposure is unlikely when the substance is used as described in the PMN. In addition, based on test data on the PMN substance, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations as low as 10 ppb in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the substance may cause serious health effects and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(i).
Recommended testing: EPA has determined that a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OPPTS 870.3650 test guideline), a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), and a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) would help characterize the human health and environmental effects of the substance.
CFR citation: 40 CFR 721.10030.

PMN Number P–02–214

Chemical name: Lithium potassium titanium oxide.
CAS number: 39318–30–4.
Effective date of section 5(e) consent order: June 17, 2002.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a physical characteristics modifier for industrial use in certain solid composite articles. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires worker protection and hazard communication and restricts the aggregate manufacture/importation volume of the PMN substance. The SNUR designates as a 'significant new use' the absence of these protective measures.
Toxicity concern: Based on test data on titanium dioxide, the Agency has concerns for lung toxicity (including oncogenicity) if the PMN substance is inhaled. The NCEL is 5 mg/m^3 as an 8-hour time-weighted average.
Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) and possibly a 2-year carcinogenicity study (OPPTS 870.4200 test guideline) would help characterize the human health effects of the PMN substance. The consent order contains two production volume limits. The PMN submitter agreed not to exceed the first production volume limit without performing the 90-day inhalation toxicity study and not to exceed the second production volume limit without performing the 2-year carcinogenicity study if warranted based on the results of the first study.
CFR citation: 40 CFR 721.10031.

PMN Number P–02–269

Chemical name: Acrylic acid, polymer with substituted acrylamides (generic).
CAS number: Not available.
Effective date of section 5(e) consent order: October 22, 2002.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a thermo-sensitive water absorbing/desorbing polymer to soil. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order restricts the particle size of the PMN substance. The SNUR designates as a 'significant new use' the absence of this protective measure.
Toxicity concern: Based on test data on swellable high molecular weight polymers (see 60 FR 16319–16320, March 29, 1995) (FRl–4921–9), the Agency has concerns for lung toxicity and oncogenicity if the PMN substance is inhaled.
Recommended testing: The Agency has determined that a 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) and a carcinogenicity study (OPPTS 870.4200 test guideline) would help characterize possible human health effects of the substance.
CFR citation: 40 CFR 721.10032.

PMN Number P–02–322

Chemical name: Zinc, [ethanedioato(2-)-. kappa. O^1, . kappa. O^2]-.
CAS number: 547–68–2.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on analogy to similar zinc compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations above 1 ppb in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations above 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may cause significant adverse effects. EPA has determined, however, that other uses of the PMN substance resulting in surface water concentrations above 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)), and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10033.

PMN Number P–02–359

Chemical name: Substituted pyridine coupled with diazotized substituted nitrobenzonitrile, diazotized substituted benzenamine and substituted pyridinecarbonitrile (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a textile dye. Based on structural analogy to neutral organics, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations above 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters in concentrations above 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish early-life toxicity test (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10034.

PMN Number P–02–382

Chemical name: Alkylbenzene sulfonate (generic).

CAS number: Not available.
Effective date of section 5(e) consent order: December 17, 2002.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a petroleum lubricant additive. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order restricts the formulation of the PMN substance. The SNUR designates as a 'significant new use' the absence of this protective measure. In addition, the order was issued under section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that this substance will be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities.

Toxicity concern: Based on analogy to structurally similar anionic surfactants, EPA expects toxicity to aquatic organisms to occur at concentrations as low as 500 ppb in surface waters. However, when the PMN substance is manufactured, processed, and used in mineral oil as described in the PMN, EPA does not expect releases of this PMN substance to pose a risk to the environment. The oil diluent serves to minimize dispersion and bioavailability of the PMN substance in surface waters. EPA has determined that other uses of the substance when not diluted in mineral oil may result in significant release to surface waters and may cause significant adverse environmental effects.

Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)) would help characterize the environmental effects of the PMN substance when not used in mineral oil.
CFR citation: 40 CFR 721.10035.

PMN Number P–02–406
Chemical name: Acetaldehyde based polymer (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a corrosion inhibitor. EPA has identified health and environmental concerns for this substance. EPA has identified health concerns for carcinogenicity and dermal sensitization based on analogy to structurally similar chemicals. Based on structural analogy to aldehydes, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. In addition, the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category (64 FR 60194, November 4, 1999). As described in the PMN, significant worker exposure is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other domestic manufacturing or other uses that result in predictable or purposeful releases to surface water could result in exposures which may cause serious chronic human health effects and significant environmental effects since the substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substance.
CFR citation: 40 CFR 721.10036.

PMN Number P–02–423
Chemical name: Complex halogenated salt of tris(ethylated aminocarbocyclic)methane (generic).
CAS number: Not available.
Basis for action: The PMN states that the substance will be used as a colorant for inks. Based on structurally similar compounds, EPA has identified human health concerns for carcinogenicity, mutagenicity, reproductive effects, and developmental effects from inhalation exposure to the PMN substance. In addition, based on structurally similar compounds, EPA expects toxicity to aquatic organisms at surface water concentrations above 1 ppb. As described in the PMN, significant worker and environmental exposure are unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in surface water concentrations above 1 ppb or any processing or use beyond the site of manufacture or import could result in worker and environmental exposures which may cause carcinogenic and serious chronic effects in humans and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route (OPPTS 870.3700 test guideline), a reproductive and fertility effects study (OPPTS 870.3800 test guideline), a *Salmonella typhimurium* reverse mutation assay (40 CFR 798.5265), and a mammalian erythrocyte micronucleus study by the intraperitoneal route (OPPTS 870.5395 test guideline) would help characterize the human health effects of the PMN substance. Positive results in the mutagencity studies would trigger a carcinogenicity study (OPPTS 870.4200 test guideline). In addition, EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10037.

PMN Number P–02–434
Chemical name: Trimellitic anhydride, polymer with substituted glycol, alkyl phenols and ethoxylated nonylphenol (generic).

CAS number: Not available.
Basis for action: The PMN states that the substance will be used as curing resin for industrial can coatings. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an aerobic biodegradation test with an analytical methodology to identify the branched-nonyl phenol degradation product (OPPTS 835.3100 test guideline) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10038.

PMN Number P–02–514

Chemical name: Diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dyestuff in printing ink. Based on structural analogy, EPA has identified concerns for carcinogenicity, mutagenicity, and developmental toxicity for the substituted beta-naphthylamine azo reduction product, blood and developmental toxicity for the aniline-acid-based azo reduction product, and carcinogenicity, developmental, liver toxicity and sensitization for the para-phenylenediamine-based azo reduction product. There is concern for chronic effects based on the submitted 28-day subchronic study with a No Observed Adverse Effect Level (NOAEL) of 15 mg/kg. As described in the PMN, worker inhalation exposures are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or processing or use of the substance as a solid may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(3)(iii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (40 CFR 799.9370), an Ames assay with the Prival modification with a concurrent positive control (OPPTS 870.5100 test guideline), and a 90-day inhalation toxicity study in rats (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10039.
PMN Number P–02–522
Chemical name: Substituted acridine naphtha substituted benzamide (generic).

CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be in exhaust dyeing of polyester fibers. Based on analogy to neutral organics, EPA is concerned that toxicity to aquatic organisms may occur at concentrations above 2 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations above 2 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters in concentrations above 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a fish chronic toxicity test (OPPTS 850.1400 test guideline (public draft)), and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10040.
PMN Number P–02–530
Chemical name: 1-Butanone, 2-(dimethylamino)-2-[(4-methylphenyl)methyl]-1-[4-(4-morpholinyl)phenyl]-.
CAS number: 119344–86–4.
Basis for action: The PMN states that the substance will be used as a photo initiator for coatings and inks. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN substance may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10041.
PMN Number P–02–585
Chemical name: 2-Propanol, 1-[bis(2-hydroxyethyl)amino]-.
CAS number: 6712–98–7.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a grinding aid and intermediate. EPA has identified health concerns for lung sensitization and carcinogenicity based on analogy to triethanolamine. There is concern for developmental toxicity, eye irritation, liver toxicity, kidney toxicity, and blood toxicity based on submitted test data. As described in the PMN, significant inhalation exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance other than as described in the PMN may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats (OPPTS 870.3700 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10042.
PMN Number P–02–697
Chemical name: Dineopentyl-4-substituted phthalate (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a catalyst component. EPA has identified health and environmental concerns because the PMN substance may be persistent, bioaccumulative, and toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category (64 FR 60194, November 4, 1999). EPA has identified health concerns for developmental toxicity based on analogy to other phthalates and concerns for liver, kidney, and neurotoxicity based on analogy to haloaromatic compounds. As described in the PMN, significant worker exposure is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance which may result in predictable or purposeful release of the PMN substance into waters of the United States or any use of the PMN substance other than as described in the PMN could result in exposures which may cause serious chronic human health effects and significant

environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substance.
CFR citation: 40 CFR 721.10043.

PMN Number P–02–698
Chemical name: Metal oxide, modified with alkyl and vinyl terminated polysiloxanes (generic).
CAS number: Not available.
Basis for action: The PMN states that the substance will be used as an adhesive. EPA has identified health concerns for lung toxicity based on analogy to poorly soluble respirable particulates. As described in the PMN, significant worker exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that manufacturing, processing, or use of the substance as a powder could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study in rodents with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10044.

PMN Number P–02–737
Chemical name: Diazotized substituted heteromonocycle coupled with naphthalene sulfonic acid derivative, nickel complex, alkaline salt (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a colorant for coating compositions. EPA has identified concerns for carcinogenicity, pulmonary sensitization, immunotoxicity, developmental toxicity, and neurotoxicity from analogous compounds, and carcinogenicity, mutagenicity, and developmental toxicity for the azo reduction products. As described in the PMN, worker inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or processing or use of the substance as a solid may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(1)(i)(D), (b)(3)(ii), and (b)(3)(iii).

Recommended testing: EPA has determined that a 90-day oral toxicity test in rodents (OPPTS 870.3100 test guideline), a bacterial reverse mutation test with Prival modification (OPPTS 870.5100 test guideline), and an unscheduled DNA synthesis test in rat hepatocytes (OPPTS 870.5550 test guideline) would help characterize the human health effects of the PMN substance. If warranted by the results of any of the three above studies, a carcinogenicity test (OPPTS 870.4200 test guideline) is recommended.
CFR citation: 40 CFR 721.10045.

PMN Number P–02–747
Chemical name: Polyaromatic amine phosphate (generic).
CAS number: Not available.
Basis for action: The PMN states that the substance will be used as a film additive. Based on structural analogy to soluble nonionic dyes and inorganic phosphates, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10046.

PMN Number P–02–766
Chemical name: Polyphosphoric acids, compds. with piperazine.
CAS number: 383905–85–9.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a flame retardant. Based on analogy to aliphatic amines and inorganic phosphates, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10047.

PMN Number P–02–869
Chemical name: Substituted anthraquinone (generic).
CAS number: Not available.
Basis for action: The PMN states that the substance will be used as a site limited intermediate. Based on structural analogy to phenols, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations above 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations above 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that a manufacture/importation volume greater than 4,500 kilograms/year may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish early life stage test (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10048.

PMN Number P–02–912
Chemical name: Phenol, 4,4′-cyclohexylidenebis[2-methyl-.
CAS number: 2362–14–3.
Basis for action: The PMN states that the substance will be used as a raw material. Based on structural analogy to phenols, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10049.

PMN Number P–02–929
Chemical name: Disubstituted-*N*′-hydroxy-benzenecarboximidamide (generic).

CAS number: Not available.
Basis for action: The PMN states that the substance will be used as an intermediate. EPA has concerns for chronic toxicity to blood, kidney, and liver based on a submitted 28-day study. As described in the PMN, significant worker exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA determined, however, that use of the substance other than as an intermediate may result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day oral toxicity study in rodents by the gavage route (OPPTS 870.3100 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10050.

PMN Number P–02–961
Chemical name: Spiro naphthoxazine (generic)
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CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a colorant. Based on structural analogy to neutral organic chemicals, EPA expects chronic toxicity to aquatic organisms at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters in significant quantities. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the substance could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10051.

PMN Number P–02–1088
Chemical name: Aminoalkyl substituted alkylphenol (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be in a destructive use. Based on structural analogy to phenols and aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10052.

PMN Number P–03–41
Chemical name: Alkyl silane methacrylate (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on structural analogy to methacrylates and esters, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 3 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity test (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10053.

PMN Number P–03–43
Chemical name: Phenol, polymer with formaldehyde, 3-[(2-aminocyclohexyl)amino]-2-hydroxypropyl ethers.
CAS number: 452082–53–0.
*Basis for action:*The PMN states that the generic (non-confidential) use of the substance will be as a resin component. Based on structural analogy to polycationic polymers, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 20 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity test (OPPTS 850.1010 test guideline (public draft)), a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)), and a fish acute toxicity test mitigated

by humic acid (OPPTS 850.1085 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.10054.

PMN Number P–03–46
Chemical name: 1-Propanaminium, 3-amino-*N*-(carboxymethyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., inner salts.

CAS number: 136504–87–5.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an oilfield foamer. EPA has identified health concerns for developmental toxicity, neurotoxicity, irritation and corrosion to skin and eyes, and lung effects based on analogy to similar quaternary compounds. As described in the PMN, significant inhalation exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance other than as described in the PMN may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats or rabbits (OPPTS 870.3700 test guideline) and a repeated dose 28-day oral toxicity study in rats (OPPTS 870.3050 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10055.

PMN Number P–03–47
Chemical name: Benzenemethanaminium, *N*-(3-aminopropyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., chlorides.
CAS number: 90194–13–1.
Basis for action: The PMN states that the generic (non-confidential) use of substance will be as an oilfield corrosion inhibitor. EPA has identified health concerns for developmental toxicity, neurotoxicity, lung effects, irritation to the lungs and mucous membranes, and severe eye irritation based on analogy to similar quaternary compounds. As described in the PMN, significant inhalation exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance other than as described in the PMN may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats or rabbits (OPPTS 870.3700 test guideline) and a repeated dose 28-day oral toxicity study in rats (OPPTS 870.3050 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10056.

IV. Objectives and Rationale for this Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 13 of the 65 chemical substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these chemical substances listed in this document are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 52 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met, as discussed in Unit III.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

1. EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.

3. EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of the chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

4. EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii) and 721.170(d)(4)(i), this rule will be effective May 29, 2007, unless EPA receives a written notice by April 30, 2007 of adverse or critical comments, or notice of intent to submit adverse or critical comments, on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific chemical substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific chemical substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit III. lists those tests. Unit III. also lists recommended testing for non-5(e) SNURs. Descriptions of recommended tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to

protocol selection. Many test guidelines are now available on the Internet at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the chemical substances.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the chemical substance subject to a SNUR is CBI. This procedure is cross-referenced in each of the SNURs that include specific significant new uses that are CBI.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure in § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the chemical substance and must identify the specific use for which it intends to manufacture or import the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e., it is below the level that would be a significant new use, that person can manufacture or import the chemical substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the chemical substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same chemical substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 13 chemical substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the TSCA Inventory prior to the effective date of the rule, the chemical substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 35 of the 65 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per 40 CFR 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing. EPA solicits comments on whether any of the uses described as significant new uses are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable

SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

IX. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford submitters ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50.

SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see 40 CFR 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

X. Notification on Substances for Which Significant New Use Rules are Not Being Issued

As required in 40 CFR 721.160(a)(2), EPA is providing notification on the following two chemical substances that are subject to final TSCA section 5(e) consent orders but for which EPA has decided not to issue significant new use rules at this time. EPA is not publishing SNURs for PMNs P–02–193 and P–03–394 because they are subject to exposure-based consent orders. EPA's exposure-based policies for new chemical substances are based on TSCA section 5(e)(1)(A)(ii)(II) and are described on the New Chemicals website at *http://www.epa.gov/oppt/newchems/pubs/expbased.htm*. Exposure-based consent orders are based on two findings: 1) Insufficient information available on the health and environmental effects of the PMN substance, and 2) expected substantial production volume and significant or substantial human exposure and/or release to the environment. Exposure-based consent orders prohibit the submitter from exceeding a specific, aggregate production or import volume unless the submitter has conducted the fate, aquatic toxicity, and/or health effects testing specified in the order and submitted the results to EPA. The production or import volume limit is usually set so that it will occur within a few years. Therefore, instead of publishing and often revoking exposure-based SNURs within a short timespan, EPA generally defers publication of SNURs on substances subject to exposure-based consent orders until the test data are received. In many cases, data received through an exposure-based consent order confirm the Agency's prediction of low or no risk, so no further regulatory action is warranted.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public docket.

XII. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that a proposed or final SNUR is not a ''significant regulatory action'' subject to review by OMB, because it does not meet the criteria in section 3(f) of the Executive order.

2. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

3. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR is

not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

4. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

5. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

9. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

11. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

12. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

13. Congressional Review Act

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 22, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.10002 to subpart E to read as follows:

§ 721.10002 2-Thiazolidinone.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-thiazolidinone (PMN P–97–415; CAS No. 2682–49–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(6)(i), (b), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an assigned protection factor (APF) of 10–25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator (either half- or full-face) equipped with N100 (if aerosols absent), R100, or P100 filters; powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; and supplied-air respirator operated in pressure demand or

continuous flow mode and equipped with a hood or helmet or tight-fitting facepiece (either half- or full-face). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.7 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.7 mg/m^3), (g)(2)(v), (g)(3)(ii), (g)(4)(i), (g)(4)(ii), (g)(4)(iii), and (g)(5). The following statement shall appear on each label as specified in § 721.72(b) and the Material Safety Data Sheet (MSDS) as specified in § 721.72(c). The substance may cause severe eye irritation. The substance may cause internal organ effects (blood, liver, and kidney). The substance may cause developmental/maternal effects. When handling this substance as a powder, use respiratory protection.

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (g), (p) (300,000 kilograms), (v)(1), (w)(1), and (x)(1).

(iv) *Disposal*. Requirements as specified in § 721.85 (a)(1), (a)(2), (a)(3), (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), and (c)(3).

(v) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.10003 to subpart E to read as follows:

§ 721.10003 Manganese heterocyclic tetraamine complex (generic).

(a) *Chemical substances and significant new uses subject to reporting*. (1) The chemical substances identified generically as manganese heterocyclic tetraamine complex (PMNs P–98–625/626/627/628/629 and P–00–614/617) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (10,000 kilograms per chemical substance).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 4. By adding new § 721.10004 to subpart E to read as follows:

§ 721.10004 2-Butenoic acid, 4,4′-[(dibutylstannylene)bis(oxy)]bis[4-oxo-, (2Z,2′Z)-, di-C$_{8-10}$-isoalkyl esters, C$_9$-rich.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 2-butenoic acid, 4,4′-[(dibutylstannylene)bis(oxy)]bis[4-oxo-, (2Z,2′Z)-, di-C$_{8-10}$-isoalkyl esters, C$_9$-rich (PMN P–98–1181; CAS No. 247041–56–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2), and (y)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 5. By adding new § 721.10005 to subpart E to read as follows:

§ 721.10005 2-Butenoic acid, 4,4′-[(dibutylstannylene)bis(oxy)]bis [4-oxo-, (2Z,2′Z)-, di-C$_{9-11}$-isoalkyl esters, C$_{10}$-rich.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 2-butenoic acid, 4 ,4′-[(dibutylstannylene)bis(oxy)]bis [4-oxo-, (2Z,2′Z)-, di-C$_{9-11}$-isoalkyl esters, C$_{10}$-rich (PMN P–98–1182) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2), and (y)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 6. By adding new § 721.10006 to subpart E to read as follows:

§ 721.10006 Mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as mixed metal oxide (PMN P–99–511) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (60,000 kilograms).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 7. By adding new § 721.10007 to subpart E to read as follows:

§ 721.10007 Alcohols, C_{12-14}- secondary, ethoxylated propoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alcohols, C_{12-14}- secondary, ethoxylated propoxylated (PMN P–00–11; CAS No. 103331–86–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 50).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. By adding new § 721.10008 to subpart E to read as follows:

§ 721.10008 Manganese strontium oxide ($MnSrO_3$).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as manganese strontium oxide ($MnSrO_3$) (PMN P–00–1121; CAS No. 12163–45–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 9. By adding new § 721.10009 to subpart E to read as follows:

§ 721.10009 Manganese yttrium oxide ($MnYO_3$).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as manganese yttrium oxide ($MnYO_3$) (PMN P–00–1122; CAS No. 12032–75–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. By adding new § 721.10010 to subpart E to read as follows:

§ 721.10010 Barium manganese oxide ($BaMnO_3$).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as barium manganese oxide ($BaMnO_3$) (PMN P–00–1123; CAS No. 12230–80–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 11. By adding new § 721.10011 to subpart E to read as follows:

§ 721.10011 Barium calcium manganese strontium oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as barium calcium manganese strontium oxide (PMN P–00–1124; CAS No. 359427–90–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 12. By adding new § 721.10012 to subpart E to read as follows:

§ 721.10012 Manganate (MnO_2^{1-}), calcium (2:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as manganate (MnO_2^{1-}), calcium (2:1) (PMN P–00–1125; CAS No. 12049–47–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 13. By adding new § 721.10013 to subpart E to read as follows:

§ 721.10013 Manganese yttrium oxide (Mn_2YO_5).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as manganese yttrium oxide (Mn_2YO_5) (PMN P–00–1126; CAS No. 12438–71–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) (manufacture, processing, or use of the PMN substance if the particle size is less than 10 microns) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 14. By adding new § 721.10014 to subpart E to read as follows:

§ 721.10014 Halogenated naphthalic anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated naphthalic anhydride (PMN P–01–109) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.10015 to subpart E to read as follows:

§ 721.10015 Halogenated benzimidazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzimidazole (PMN P–01–110) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. By adding new § 721.10016 to subpart E to read as follows:

§ 721.10016 Dibenzimidazothianaphthalene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dibenzimidazothianaphthalene (PMN P–01–111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. By adding new § 721.10017 to subpart E to read as follows:

§ 721.10017 Amine terminated bisphenol A diglycidyl ether polymer (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as amine terminated bisphenol A diglycidyl ether polymer (PMNs P–01–257/258/259 and P–01–261) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.10018 to subpart E to read as follows:

§ 721.10018 Calcium hydroxide oxide silicate ($Ca_6(OH)_2O_2(Si_2O_5)_3$).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as calcium hydroxide oxide silicate ($Ca_6(OH)_2O_2(Si_2O_5)_3$) (PMN P–01–442; CAS No. 13169–90–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (f), (j) (use other than as filler to reinforce resins, additive for resins, and filter medium), (v)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.10019 to subpart E to read as follows:

§ 721.10019 Benzoic acid, 2-chloro-5-nitro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as benzoic acid, 2-chloro-5-nitro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester (PMN P–01–563; CAS No. 174489–76–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 20. By adding new § 721.10020 to subpart E to read as follows:

§ 721.10020 Benzoic acid, 5-amino-2-chloro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as benzoic acid, 5-amino-2-chloro-, 1,1-dimethyl-2-oxo-2-(2-propenyloxy) ethyl ester (PMN P–01–564; CAS No. 174489–43–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 21. By adding new § 721.10021 to subpart E to read as follows:

§ 721.10021 Magnesium potassium titanium oxide.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as magnesium potassium titanium oxide (PMN P–01–764; CAS No. 39290–90–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(4), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an assigned protection factor (APF) of 10–25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator equipped with N100 (if aerosols absent), R100, or P100 filters (either half- or full-face); powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; and supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet or tight-fitting facepiece (either half- or full-face). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 5 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set 0.1 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 5 mg/m^3) and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 22. By adding new § 721.10022 to subpart E to read as follows:

§ 721.10022 Benzenamine, *N*-phenyl-, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, *N*-phenyl-, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs (PMN P–01–769; CAS No. 333955–69–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (antioxidant for lubricating oils).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.10023 to subpart E to read as follows:

§ 721.10023 Benzenamine, *N*-phenyl-, ar ar′-(C_9-rich C_{8-10}-branched alkyl) derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, *N*-phenyl-, ar,ar′-(C_9-rich C_{8-10}-branched alkyl) derivs (PMN P–01–770; CAS No. 333955–70–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (antioxidant for lubricating oils).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.10024 to subpart E to read as follows:

§ 721.10024 10H-Phenothiazine, ar-(C_9-rich C_{8-10}-branched alkyl) derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 10H-phenothiazine, ar-(C_9-rich C_{8-10}-branched alkyl) derivs (PMN P–01–771; CAS No. 333955–79–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (antioxidant for lubricating oils).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.10025 to subpart E to read as follows:

§ 721.10025 10H-Phenothiazine, ar, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as 10H-phenothiazine, ar, ar′-(C_9-rich C_{8-10}-branched alkyl) derivs (PMN P–01–772; CAS No. 333955–80–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (antioxidant for lubricating oils).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.10026 to subpart E to read as follows:

§ 721.10026 Cashew, nutshell liq., ethoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cashew, nutshell liq., ethoxylated (PMN P–01–856; CAS No. 350820–95–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (any manufacturing, processing, or use of the PMN substance with less than 55 moles of the ethoxy or with an average molecular weight less than 2,700 daltons).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. By adding new § 721.10027 to subpart E to read as follows:

§ 721.10027 Ethoxylated alkylsulfate, substituted alkylamine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethoxylated alkylsulfate, substituted alkylamine salt (PMN P–01–862) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 28. By adding new § 721.10028 to subpart E to read as follows:

§ 721.10028 Disubstituted benzene metal salts (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as disubstituted benzene metal salts (PMNs P–01–901 and P–01–902) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1) and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 29. By adding new § 721.10029 to subpart E to read as follows:

§ 721.10029 Isocyanate compound, modified with methoxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanate compound, modified with methoxysilane (PMN P–01–918) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), and (a)(6). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators meet the minimum requirement for § 721.63(a)(4): Air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters; powered air-purifying respirator equipped with a tight-fitting full facepiece and High Efficiency Particulate Air (HEPA) filters; supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting full facepiece. As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3), (g)(2)(v), and (g)(5). The following statements shall appear on each label as specified in § 721.72(b) and the Material Safety Data Sheet (MSDS) as specified in § 721.72(c): This substance may cause skin irritation and sensitization.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 30. By adding new § 721.10030 to subpart E to read as follows:

§ 721.10030 Pyrimido[5,4-g]pteridine-2,4,6,8-tetramine, 4-methylbenzenesulfonate, base-hydrolyzed.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as pyrimido[5,4-g]pteridine-2,4,6,8-tetramine, 4-methylbenzenesulfonate, base-hydrolyzed (PMN P–01–919; CAS No. 346709–25–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.10031 to subpart E to read as follows:

§ 721.10031 Lithium potassium titanium oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as lithium potassium titanium oxide (PMN P–02–214; CAS No. 39318–30–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an APF of 10–25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator (either half- or full-face) equipped with N100 (if aerosols absent), R100, or P100 filters; powered air-purifying, respirator equipped with a loose-fitting hood or helmet or tight-fitting facepiece (either half- or full-face) and High Efficiency Particulate Air (HEPA) filters; and supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet or tight-fitting facepiece (either half- or full-face). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 5 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to

those contained in the corresponding section 5(e) consent order.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set 0.1 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 5 mg/m^3), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 32. By adding new § 721.10032 to subpart E to read as follows:

§ 721.10032 Acrylic acid, polymer with substituted acrylamides (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as acrylic acid, polymer with substituted acrylamides (PMN P–02–269) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k) (any manufacturing, processing, or use of the PMN substance with an aerodynamic diameter less than 10 microns).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 33. By adding new § 721.10033 to subpart E to read as follows:

§ 721.10033 Zinc, [ethanedioato(2-)-. kappa. O^1, . kappa. O^2]-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as zinc, [ethanedioato(2-)-. kappa. O^1, . kappa. O^2]- (PMN P–02–322; CAS No. 547–68–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 34. By adding new § 721.10034 to subpart E to read as follows:

§ 721.10034 Substituted pyridine coupled with diazotized substituted nitrobenzonitrile, diazotized substituted benzenamine and substituted pyridinecarbonitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as substituted pyridine coupled with diazotized substituted nitrobenzonitrile, diazotized substituted benzenamine and substituted pyridinecarbonitrile (PMN P–02–359) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.10035 to subpart E to read as follows:

§ 721.10035 Alkylbenzene sulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as alkylbenzene sulfonate (PMN–02–382) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k) (manufacture, import, or processing of the chemical without 19 percent or more mineral oil as a diluent).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.10036 to subpart E to read as follows:

§ 721.10036 Acetaldehyde based polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as acetaldehyde based polymer (PMN P–02–406) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) *Release to water*. Requirements as specified § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 37. By adding new § 721.10037 to subpart E to read as follows:

§ 721.10037 Complex halogenated salt of tris(ethylatedaminocarbocyclic)methane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as complex halogenated salt of tris(ethylatedaminocarbocyclic)methane (PMN P–02–423) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (d) and (e).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.10038 to subpart E to read as follows:

§ 721.10038 Trimellitic anhydride, polymer with substituted glycol, alkyl phenols and ethoxylated nonylphenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trimellitic anhydride, polymer with substituted glycol, alkyl phenols and ethoxylated nonylphenol (PMN P–02–434) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.10039 to subpart E to read as follows:

§ 721.10039 Diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt (PMN P–02–514) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.10040 to subpart E to read as follows:

§ 721.10040 Substituted acridine naphtha substituted benzamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted acridine naphtha substituted benzamide (PMN P–02–522) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply tothis section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 41. By adding new § 721.10041 to subpart E to read as follows:

§ 721.10041 1-Butanone, 2-(dimethylamino)-2-[(4-methylphenyl)methyl]-1-[4-(4-morpholinyl)phenyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-butanone, 2-(dimethylamino)-2-[(4-methylphenyl)methyl]-1-[4-(4-morpholinyl)phenyl]-(PMN P–02–530; CAS No. 119344–86–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 42. By adding new § 721.10042 to subpart E to read as follows:

§ 721.10042 2-Propanol, 1-[bis(2-hydroxyethyl)amino]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propanol, 1-[bis(2-hydroxyethyl)amino]- (PMN P–02–585; CAS No. 6712–98–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 43. By adding new § 721.10043 to subpart E to read as follows:

§ 721.10043 Dineopentyl-4-substituted phthalate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dineopentyl-4-substituted phthalate (PMN P–02–697) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply tothis section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 44. By adding new § 721.10044 to subpart E to read as follows:

§ 721.10044 Metal oxide, modified with alkyl and vinyl terminated polysiloxanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as metal oxide, modified with alkyl and vinyl terminated polysiloxanes (PMN P–02–698) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 45. By adding new § 721.10045 to subpart E to read as follows:

§ 721.10045 Diazotized substituted heteromonocycle coupled with naphthalene sulfonic acid derivative, nickel complex, alkaline salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a diazotized substituted heteromonocycle coupled with naphthalene sulfonic acid derivative, nickel complex, alkaline salt (PMN P–02–737) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 46. By adding new § 721.10046 to subpart E to read as follows:

§ 721.10046 Polyaromatic amine phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyaromatic amine phosphate (PMN P–02–747) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 47. By adding new § 721.10047 to subpart E to read as follows:

§ 721.10047 Polyphosphoric acids, compds. with piperazine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a polyphosphoric acids, compds. with piperazine (PMN P–02–766; CAS No. 383905–85–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 48. By adding new § 721.10048 to subpart E to read as follows:

§ 721.10048 Substituted anthraquinone (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted anthraquinone (PMN P–02–869) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (4,500 kilograms).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 49. By adding new § 721.10049 to subpart E to read as follows:

§ 721.10049 Phenol, 4,4′- cyclohexylidene bis[2-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a phenol, 4,4′- cyclohexylidene bis[2-methyl- (PMN P–02–912; CAS No. 2362–14–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 50. By adding new § 721.10050 to subpart E to read as follows:

§ 721.10050 Disubstituted-*N*′- hydroxy-benzenecarboximidamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted-*N*′-hydroxy-benzenecarboximidamide (PMN P–02–929) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 51. By adding new § 721.10051 to subpart E to read as follows:

§ 721.10051 Spiro naphthoxazine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as spiro naphthoxazine (PMN P–02–961) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 52. By adding new § 721.10052 to subpart E to read as follows:

§ 721.10052 Aminoalkyl substituted alkylphenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminoalkyl substituted alkylphenol (PMN P–02–1088) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 53. By adding new § 721.10053 to subpart E to read as follows:

§ 721.10053 Alkyl silane methacrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl silane methacrylate (PMN P–03–41) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 54. By adding new § 721.10054 to subpart E to read as follows:

§ 721.10054 Phenol, polymer with formaldehyde, 3-[(2-aminocyclohexyl)amino]-2-hydroxypropyl ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phenol, polymer with formaldehyde, 3-[(2-aminocyclohexyl)amino]-2-hydroxypropyl ethers (PMN P–03–43; CAS No. 452082–53–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 55. By adding new § 721.10055 to subpart E to read as follows:

§ 721.10055 1-Propanaminium, 3-amino-*N*-(carboxymethyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., inner salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanaminium, 3-amino-*N*-(carboxymethyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., inner salts (PMN P–03–46; CAS No. 136504–87–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 56. By adding new § 721.10056 to subpart E to read as follows:

§ 721.10056 Benzenemethanaminium, *N*-(3-aminopropyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., chlorides.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as benzenemethanaminium, *N*-(3-aminopropyl)-*N*,*N*-dimethyl-, *N*-soya acyl derivs., chlorides (PMN P–03–47; CAS No. 90194–13–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. E7–5797 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 72, No. 60
Thursday, March 29, 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 Part 51

[Docket # AMS–FV–2007–0008; FV–06–310]

United States Standards for Grades of Florida Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions of the United States Standards for Grades of Florida Avocados. At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result AMS is considering revisions to the Florida Avocado standard to include all avocados.

DATES: Comments must be received by May 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the internet at *http://www.regulations.gov* or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185. The United States Standards for Grades of Florida Avocados are available either through the address cited above or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request.

AMS is considering revisions to the United States Standards for Grades of Florida Avocados. These standards were published on September 3, 1957.

Background

At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Florida Avocados (7 CFR 51.3050–3069) for possible revision. The current standard only applies to avocados grown in Florida. AMS is considering revisions to the standards so it may be applied to all avocados. The title of the standard would be modified by deleting ''Florida,'' to make the standards generic to cover all avocados. As a result this allows for avocados from different growing regions to be marketed and certified to a grade using the standard. AMS will also eliminate § 51.3054 entitled ''Unclassified.'' This section is not a grade and only serves to show than no grade has been applied to the lot. This section will be removed from all fresh fruit and vegetable standards. It is no longer considered necessary. However, prior to undertaking detailed work to develop the proposed revision to the standards, AMS is soliciting comments on these changes as well as any other revisions to the United States Standards for Grades of Florida Avocados to better serve the industry. Users of these standards include: voluntary, destination and shipping point users, in addition to required users.

AMS is seeking comments regarding how, if at all, marketing would be improved by removing the word ''Florida'' so the standard could be applied to all avocados, including avocados grown outside the state of Florida. Further, comments outlining any additional costs or benefits would be helpful in determining a final decision after the comments are received and reviewed. AMS will also review any other suggested revisions and would be interested in how they would improve the marketing of avocados and any associated costs and/or benefits to the industry.

There is a mandatory marketing program which regulates the handling of Florida avocados under (7 CFR part 915). Avocados under the marketing order have to meet certain requirements set forth in the grade standards. In addition, avocados are subject to section 8e import requirements (7 CFR part 944) under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported avocados to meet grade, size, quality under the applicable marketing order.

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

This notice provides for a 60-day comment period for interested parties to comment on whether any changes are necessary to the standards. Should AMS conclude that there is a need for any revisions of the standards, the proposed revisions will be published in the **Federal Register** with a request for comments.

Authority: 7 U.S.C. 1621–1627.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5788 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0012; FV07–916/917–3 PR]

Late Payment and Interest Charges on Past Due Assessments Under the Nectarine and Peach Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments concerning the collection of assessments owed under the nectarine and peach marketing orders. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative Committee and the Peach Commodity Committee (committees). This rule would implement authorities contained in the marketing order to allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers.

DATES: Comments must be received by April 13, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must 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; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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 J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jennifer.Garcia3@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: This proposal is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on establishing regulations that would allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers. This proposal was unanimously recommended by the committees at meetings on November 30, 2006.

Sections 916.41 and 917.37 of the orders provide authority for the committees to assess handlers of California nectarines and peaches, respectively, to fund authorized activities such as research and promotion programs. Paragraph (b) of these sections was amended on July 21, 2006 (71 FR 41345), to authorize the committees, with the approval of the Secretary, to apply late payment charges, interest charges, or both on past due assessments.

At meetings on November 30, 2006, the committees recommended establishing rules and regulations to implement these authorities regarding late payment and interest charges. Although the majority of handlers remit their assessments in a timely manner, there are some handlers who do not. Implementing late payment and interest charges would provide an incentive for handlers to pay assessments in a timely manner and would remove any financial advantage for those who do not pay on time.

Specifically, the committees recommended that a late payment charge be applied to any assessment that has not been received in the committees' office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The committees recommended a late payment charge of 10 percent of the unpaid balance. In addition, interest would be applied to the unpaid balance and late payment charge for the number of days the payment is delinquent beyond 60 days.

The committees recommended that interest be applied at the current commercial prime rate charged by the committees' bank plus 2 percent beginning on the day the assessment becomes delinquent. However, USDA determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the proposal has been revised. Accordingly, new §§ 916.141 and 917.137 specifying implementation of the 10 percent late charge and 1.5 percent per month interest rate would be added to the rules and regulations of the nectarine and peach orders, respectively.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 175 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 676 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000. Small agricultural producers are defined by the SBA as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2006 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of $6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2006 season, the committees' staff estimates that small handlers represent approximately 85 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 68 producers in the industry could be defined as other than small entities. For the 2006 season, the committees' staff estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2006 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

This proposed rule would add new §§ 916.141 and 917.137 to the orders' rules and regulations, whereby late payment and interest charges on delinquent assessment payments would be implemented under the orders. Specifically, handlers not remitting their assessment payments within 60 days of the invoice date would be subject to a 10 percent late payment penalty and interest charges accruing at a rate of 1.5 percent per month. The late payment and interest charges would serve as an incentive for handlers to remit assessment payments when due to avoid paying an increased amount to the committees. This action is expected to facilitate program operations. Authority for this action is provided in paragraph (b) of §§ 916.41 and 917.37 of the orders.

This action would apply late payment and interest charges to assessments not paid within 60 days of the invoice date. Only handlers who are late in paying their assessments owed the committees would be impacted. For example, a delinquent invoice with late payment and interest charges applied would be calculated in the following manner: If a handler failed to pay an invoice for $5,000 within 60 days of the July 1, 2007, invoice date, a 10 percent late payment charge ($500) would be applied to the unpaid balance. In addition, interest charges at a rate of 1.5 percent per month would be added to the assessments owed and the accrued late payment charge. The 1.5 percent per month rate computes to an annual rate of 18 percent. This must be divided by 365 days to obtain the daily rate. This same July 1, 2007, invoice would be 62 days delinquent as of September 1, 2007, bringing the interest charges to $168.16 ($5,500 × .18 ÷ 365 × 62). Thus, the total assessment due, including late payment and interest charges, would be $5,668.16 as of September 1, 2007.

The committees discussed alternatives to this change, including not implementing late payment and interest charges at all. While only a small number of handlers fail to make assessments payments when due, the committees believe that a lack of action only compounds the problem. The committees considered applying late payment and interest charges at a lower rate but believe that a higher rate would be more likely to encourage compliance with the orders' assessment requirements. The joint executive committee discussed the issue and recommended the 10 percent late payment and prime plus 2 percent interest charges that the committee members unanimously approved and recommended to USDA.

However, as previously mentioned, USDA has determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the proposal has been revised.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the subcommittee and committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the November 30, 2006, meetings were public meetings and all entities of all sizes were invited to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible, since the season begins on April 1. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Add § 916.141 to read as follows:

§ 916.141 Delinquent assessments.

(a) The Nectarine Administrative Committee shall impose a late payment charge on any assessment that has not been received in the Nectarine Administrative Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Nectarine Administrative Committee shall impose an interest charge on any assessment payment that has not been received in the committee's office, or legibly postmarked by the U.S. Postal Service, within 60-days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60-day payment period.

PART 917—PEACHES GROWN IN CALIFORNIA

3. Add § 917.137 to read as follows:

§ 917.137 Delinquent assessments.

(a) The Peach Commodity Committee shall impose a late payment charge on any assessment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Peach Commodity Committee shall impose an interest charge on any assessment payment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60-day payment period.

Dated: March 23, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–5789 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA35

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service and the Rural Utilities Service, U.S. Department of Agriculture.

ACTION: Advanced notice of proposed rulemaking; comments requested.

SUMMARY: The Rural Business-Cooperative Service and the Rural Utilities Service seek public input regarding the possibility of operating the Rural Business Investment Program, in light of the loss of funding starting in the 2007 Fiscal Year, to provide for non-leveraged Rural Business Investment Companies.

DATES: Written or e-mail comments on this advance notice of proposed rulemaking must be received on or before 30 days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web Site: http://www.rurdev.usda.gov/regs.* Follow instructions for submitting comments on the Web Site.
- *E-Mail: comments@wdc.usda.gov.* Include the RIN No. 0570—in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael Foore, Program Advisor, Rural Development, Business and Cooperative Programs, 1400 Independence Ave., SW., Stop 3201, Washington, DC 20250–3201, Telephone: (202) 690–4730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This advance notice has been reviewed under Executive Order 12866 by the Office of Management and Budget and has been determined to be significant for the purposes of Executive Order 12866.

Background

The Rural Development Mission Area of the Department of Agriculture (Rural Development) is responsible for assisting rural communities in improving the quality of life for their residents and in increasing their economic opportunities. Most of the programs and activities of Rural Development provide assistance in the form of loans, loan guarantees, and grants. However, Rural Development estimates that at least $1.45 trillion of equity in rural America is idle and could be used to assist the development of rural America.

In an attempt to tap this equity in rural America and provide for investment capital opportunities which are not widely available, Congress created the Rural Business Investment Program in section 6029 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171; 116 Stat. 134). The Rural Business Investment Program authorized the Secretary of Agriculture to encourage, with financial and technical assistance, the creation of investment companies, called Rural Business Investment Companies, which would provide equity investments to rural small businesses. These investment companies would leverage capital raised from private investors, including rural residents into investments in rural small businesses. The legislation strongly encouraged that the Secretary of Agriculture operate this Program with the assistance of the Small Business Administration (SBA) because it was modeled after the SBA Small Business Investment Program. The legislation even provided funding to cover SBA's costs of providing such assistance. On June 8, 2004, Rural Development promulgated an interim rule to implement the Rural Business Investment Program [7 CFR part 4290; 69 FR 32200].

The legislation that created the Rural Business Investment Program gave the Secretary of Agriculture two choices concerning the creation of Rural Business Investment Companies: leveraged and non-leveraged. A leveraged Rural Business Investment Company is a company that is created with an infusion of Federal capital. A non-leveraged Rural Business Investment Company is a company that is created without the infusion of Federal capital. Since the legislation authorizing this Program provided funds for leveraged Rural Business Investment Companies and SBA's own programs operate with leveraged entities, the focus of the current Rural Business Investment Program has been on the creation of leveraged Rural Business Investment Companies. Since the promulgation of the interim rule, Rural Development, with SBA's support, has conditionally selected three leveraged Rural Business Investment Companies. These companies have initiated the process of making equity investments in rural small businesses.

Issue

With the enactment of section 1403 of the Deficit Reduction Act of 2005 (Pub. L. 109–171; 120 Stat. 4), all unobligated funds for the Rural Business Investment Program for administrative costs for SBA and for the assistance grants and leveraging for the Rural Business Investment Companies will be rescinded at the end of Fiscal Year 2006. The enactment of this legislation effectively prevents the funding and support of new Rural Business Investment Companies after the end of this Fiscal Year.

Rural Development believes that a greater focus on tapping the equity in rural America for the purposes of furthering rural development should be maintained. By encouraging investments in rural businesses with rural equity, not only is there the development of an underutilized rural resource, but also there is the potential to use such investments to increase wealth in rural communities.

The development of renewable energy resources such as biofuels and wind represents an example of the economic development power of tapping rural equity. The development of these new energy resources has reached a stage where it is possible to find capital in the United States and elsewhere to develop many of these rural resources. While the rural areas where these outside funded projects are located will reap some economic benefits, the profits and equity they create will be owned by those outside these rural communities. Rural Development believes that if at least a portion of the funding of these projects can be supported by the equity in the surrounding rural communities, the projects are likely to be more successful because they will have greater local support and generate profits and equity that will be retained in the these rural communities which could be applied to support further development.

Potential Strategies for Continuation of the Rural Business Investment Program

Rural Development seeks to encourage not only the placement of economic development projects in rural areas, like an ethanol plant, but also the development of business and investment models that will lead to the greater use of, and growth in, wealth, equity, and economic opportunities in rural communities. For these reasons, Rural Development would like to investigate whether there may be a way to continue the Rural Business Investment Program, despite the enactment of the Deficit Reduction Act of 2005, as part of a strategy to help unlock the potential power that rural equity has to finance rural development in a manner that will help rural residents share in the benefits of the economic growth potential of rural America.

After reviewing the legislation creating the Rural Business Investment Program, it may be possible for the Secretary of Agriculture to operate this Program with another partner. The legislation authorizing the Rural Business Investment Program authorized certain financial institutions to create and invest in Rural Business Investment Companies (7 U.S.C. 2009cc–9). Eligible financial institutions include banks and savings associations whose deposits are insured by the Federal Deposit Insurance Corporation and Farm Credit System institutions. The Farm Credit Administration (FCA), the independent Federal agency that regulates the Farm Credit System, is responsible for the chartering, oversight and examination of the financial institutions of the Farm Credit System (FCS). Additionally, FCA has experience in examining other non-System institutions, such as Small Business Investment Companies. Therefore, FCA has the expertise to operate the non-leveraged program for the Secretary of Agriculture. If the focus of this Program shifted to the creation of non-leveraged Rural Business Investment Companies, the only funds that would be needed would be administrative costs to administer the program and provide technical assistance. It is Rural Development's understanding that these funds could be raised through the fees the FCA can currently charge regulated entities. If the FCA would become a partner of this Program, provisions would be made to ensure that non-Farm Credit System members would be allowed to participate in the creation and financing of non-leveraged Rural Business Investment Companies in accordance with the statute. This proposal is based on a comment Rural Development received from the FCA during the interim rule commenting period for the Rural Business Investment Program [69 FR 32200; June 8, 2004].

Requests for Comments

Rural Development is seeking help from the public regarding the following questions related to this matter:

(1) In what ways can Rural Development leverage the Rural Business Investment Program, a developmental venture capital program, to help encourage an expanded use of rural equity in the development of rural America?

(2) Does the Rural Business Investment Program provide an appropriate basis to encourage the expanded use of rural equity in rural development? If not, are there changes in the regulation that could be made to make the Program more effective?

(3) If USDA chooses to use one or more partners in order to provide for the licensing of non-leveraged Rural Business Investment Companies, what type of considerations should be made? How could such a partnership, between USDA and FCA, be made most effective for USDA, FCA, and the rural business community? If other Federal agencies in addition to FCA wish to become a partner, how should this be addressed within the regulation?

Dated: March 21, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 07–1530 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–83]

Project on Government Oversight and Union of Concerned Scientists; Receipt of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated February 23, 2007, which was filed with the Commission by David Lochbaum, on behalf of the Project On Government Oversight and the Union of Concerned Scientists. The petition was docketed by the NRC on March 5, 2007, and has been assigned Docket No. PRM–50–83. The petitioners request that the NRC amend its regulations to require periodic demonstrations by applicable local, State and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage greater than the design basis threat.

DATES: Submit comments by June 12, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include PRM–50–83 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *ATTN:* Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal e-Rulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* 301–415–7163 or *Toll Free:* 1–800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioners

The petitioners are the Project On Government Oversight and the Union of Concerned Scientists. The petitioners state that the Project On Government Oversight, formerly the Project on Military Procurement, previously worked to reform military spending. After experiencing success, the petitioner expanded its mission to include the investigation of systemic waste, fraud and abuse in all Federal agencies, including the important topic of nuclear plant security.

The petitioners state that the Union of Concerned Scientists is a nonprofit partnership of scientists and citizens that combines scientific analysis, policy development, and citizen advocacy to achieve practical environmental solutions. In 2002, the Union of Concerned Scientists had 61,300 members. The petitioners state that the Union of Concerned Scientists has been an active participant in the past in public meetings conducted by NRC regarding security regulations, and the petitioner continues to articulate potential problems and recommended solutions in various public arenas.

Background

Current regulations at 10 CFR part 73 contain requirements for the physical protection of nuclear power plants and materials. On January 29, 2007, the Commission approved the issuance of a final rule which revises § 73.1 to establish a new design basis threat (DBT) level. The final DBT rule was published in the **Federal Register** on March 19, 2007. (72 FR 12705)

The petitioners observe that the final DBT rule reflects the Commission's determination of the most likely composite set of adversary features against which private security forces should reasonably have to defend. The petitioners believes that the DBT level set forth in the final rule is less what is determined to be the maximum level deemed credible by the national intelligence community, and that the potential exists for radiological sabotage at a level greater than the new DBT level. The petitioners therefore state that the defense of a nuclear power plant against a threat greater than the DBT would depend on the supplementation by local, State and Federal entities.

The Proposed Amendment

The petitioners request that the NRC amend its regulations at 10 CFR part 50 to require periodic demonstrations that nuclear power plants can be adequately protected against radiological sabotage above the DBT level. Current regulations in Appendix E to 10 CFR part 50 require periodic demonstrations that plant owners and external authorities can successfully meet their responsibilities during nuclear power plant emergencies. The petitioners point out, however, that the Commission's regulations do not provide for periodic demonstration by applicable local, State and Federal entities to ensure that nuclear power plants are protected against radiological sabotage above the DBT level. The petitioners state that their requested amendment would provide reasonable assurance that external authorities could demonstrate that adequate protection is also available against radiological sabotage greater than the DBT level.

The petitioners believe that in order for Americans to be adequately protected, nuclear power plants must be defended against both DBT and beyond-DBT attacks. Therefore, the petitioners request that 10 CFR part 50 be amended in a way similar to current Appendix E to require periodic exercises involving licensees and applicable local, State and Federal entities to demonstrate their capabilities to protect from radiological sabotage greater than the DBT level.

Conclusion

The petitioners believe that the proposed amendment to 10 CFR part 50

will complement current regulations by requiring periodic demonstrations by applicable local, State and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage greater than the DBT level. Accordingly, the petitioners request that the NCR amend its regulations related to emergency preparedness as described previously in the section titled, ''The Proposed Amendment.''

Dated at Rockville, Maryland, this 23rd day of March 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 07–1543 Filed 3–28–07; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22918; Directorate Identifier 2005–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100 and A320–200 Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Airbus Model A319–100 and A320–200 series airplanes. The original NPRM would have required repetitive inspections of the wing-tank fuel pumps, canisters, and wing fuel tanks for detached identification labels, and corrective action if necessary. The original NPRM resulted from several incidents of detached plastic identification labels found floating in the wing fuel tanks. This action revises the original NPRM by expanding the applicability and mandating modification of the fuel strainers at the fuel pump and suction bypass intakes. We are proposing this supplemental NPRM to prevent plastic identification labels being ingested into the fuel pumps and consequently entering the engine fuel feed system, which could result in an engine shutdown.

DATES: We must receive comments on this supplemental NPRM by April 23, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–22918; Directorate Identifier 2005–NM–172–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain Airbus Model A319–100 and A320–200 series airplanes. The original NPRM was published in the **Federal Register** on November 10, 2005 (70 FR 68379). The original NPRM proposed to require repetitive inspections of the wing-tank fuel pumps, canisters, and wing fuel tanks for detached identification labels, and corrective action if necessary.

Since the original NPRM was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, superseded French airworthiness directive F–2005–121, dated July 20, 2005, and issued EASA airworthiness directive 2006–0236, dated August 10, 2006. The French airworthiness directive was referred to in the original NPRM. The EASA airworthiness directive expands the applicability and mandates the modification of the fuel strainers at the fuel pump and suction bypass intakes, which terminates the repetitive inspections.

Relevant Service Information

Airbus has issued Service Bulletin A320–28–1102, Revision 02, including Appendix 01, dated July 10, 2006 (Revision 01, dated February 11, 2005, was referred to in the original NPRM as the appropriate source of service information for accomplishing the repetitive detailed visual inspections for detached identification labels in the four wing-tank fuel pumps and canisters). The procedures in Revision 02 are essentially the same as those in Revision 01; however, Revision 02 revises the accomplishment timescales, updates the effectivity, and contains editorial changes.

Airbus has also issued Service Bulletin A320–57–1117, Revision 02, including Appendix 01, dated March 13, 2006. We referred to the original issue in the original NPRM as the appropriate source of service information for accomplishing the repetitive detailed visual inspections for detached identification labels in the collector cells between ribs 1 and 2, the surge tank between ribs 22 and 26, and the wing fuel tank and vent box. Additional work is necessary for airplanes on which the original issue of the service bulletin was accomplished. The procedures specified in subsequent revisions of the service bulletin include removing the labels, marking the fastener data on the wing structure with black ink on a white background, and restoring the primer before marking the fastener data on the wing structure. An additional inspection of work accomplished in accordance with previous issues of the service bulletin is also necessary. The inspection involves an adhesion test of the paint applied.

In addition, Airbus has issued Service Bulletin A320–28–1149, dated June 14, 2006. The service bulletin describes procedures for modifying the fuel strainers at the fuel pump and suction bypass intakes. The modification includes, among other things, installing support brackets for the fuel pump strainers; installing new, improved fuel pump strainer assemblies; and installing new, improved fuel pump suction valve strainer assemblies. Accomplishing this modification eliminates the need for the repetitive inspections specified in Service Bulletin A320–28–1102. Service Bulletin A320–28–1149 also recommends prior or concurrent accomplishment of the inspections specified in Service Bulletin A320–57–1117.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0236, dated August 10, 2006, to ensure the continued airworthiness of these airplanes in France.

Comments

We have considered the following comments on the original NPRM.

Request To Change Applicability/Add Revised Service Information

Airbus states that the EASA airworthiness directive corrects the applicability specified therein (and identified in the original NPRM). Airbus adds that the service bulletins have also been revised to list new manufacturer serial numbers (MSNs) in the applicability, including two U.S. MSNs.

We infer that Airbus wants us to change the applicability in the original NPRM and add the revised service information. We agree to change the applicability in this supplemental NPRM to correspond with the EASA airworthiness directive specified in the Discussion section above, and to add the revised Airbus service bulletins specified in the Relevant Service Information section above. Therefore, we have changed paragraphs (c), (f), (g), and (i) of this supplemental NPRM accordingly.

Requests To Extend Repetitive Inspection Interval or Remove Repetitive Inspections Specified in Paragraph (f) of the Original NPRM

The Air Transport Association (ATA), on behalf of two of its members, Northwest Airlines and America West Airlines, states that the intent of the 600-flight-hour repetitive inspections for detached identification labels in the four wing-tank fuel pumps and canisters is already being addressed per the current master minimum equipment list (MMEL) requirements, and would be superfluous and ineffective. America West asks that the one-pump restriction per MMEL 28–21–01 be removed on airplanes identified in Service Bulletin A320–28–1102. America West states that the pumps will be inspected at sufficient intervals to provide an acceptable level of assurance that the remaining pump is not clogged with labels.

Northwest Airlines states that accomplishing the noted service bulletins and the current MMEL makes the inspection requirement unnecessary. Northwest Airlines adds that this is for two main reasons: First, the only remaining labels will be located in the vent box, and thus not normally immersed in fuel; therefore, it would be improbable that the labels would detach; second, per the MMEL, a wing tank fuel pump cannot be placed on the MEL if a ''Fuel Tank LO PR'' warning is displayed on the electronic centralized aircraft monitor. If this warning is displayed, the airplane is grounded pending a full inspection of the affected fuel system components.

America West states that the 600-flight-hour repeat interval is not warranted due to the actions taken. America West previously accomplished the inspection of the fuel pumps and canisters specified in Airbus Service Bulletin A320–28–1102, Revision 01. America West adds that it also previously accomplished the inspection of the fuel tank and vent box specified in Airbus Service Bulletin A320–57–1117. America West finds that these actions adequately removed all the labels and it has been over two years since the inspection was accomplished and no labels have been found in the fuel tanks or pumps during that timeframe. America West is concerned that repeating the inspection every 600 flight hours would result in excessive removals of the pumps, which could lead to additional maintenance issues and possible safety issues, such as damage to the pump and/or fuel leaks. America West asks that the repetitive interval be extended to a C-check.

America West also notes that it does not agree with the definition of a detailed inspection specified in the original NPRM. America West explains that the definition would be interpreted as a requirement to have the component torn down in a shop environment, and adds that experience has shown that the pump can have an adequate inspection at the airplane and the canisters can be inspected without removal from the airplane.

We partially agree. We do not agree to remove the repetitive inspections required by paragraph (f) of this supplemental NPRM; however, we do agree to extend the repetitive interval for certain airplanes. We have changed paragraph (g) of this supplemental NPRM to require repeating the inspection at intervals not to exceed 600 flight hours for airplanes on which the actions specified in Airbus Service Bulletin A320–57–1117, Revision 02, dated March 13, 2006, have not been done; or at intervals not to exceed 3,000 flight hours for airplanes on which those actions have been done. This supplemental NPRM would also require repeating the inspection before the next flight following any wing-tank fuel pump failure. This change coincides with the repetitive inspection interval required by the EASA airworthiness directive. In addition, we do not agree to remove the one-pump restriction per MMEL 28–21–01, as this reinforces maintaining safe flight of the airplane following any wing-tank fuel pump failure.

Request To Use Alternate Marking Procedure

ATA, on behalf of its member U.S. Airways, states that the repair procedure in Appendix 01 of Service Bulletin A320–57–1117 requests operators to apply varnish over the white painted area on which panel fastener information is written using indelible ink. U.S. Airways adds that it found that if a marker is used to re-identify the fastener information, as soon as the

recommended varnish is applied, the information gets smudged and smeared and is no longer legible. U.S. Airways used black paint MPN 8000B00701CAQBTX instead of the recommended marker, and after the varnish is applied there is no smudging or smearing. U.S. Airways asks that the supplemental NPRM include approval to use this black paint (or equivalent) in lieu of Eddings 8404.

We do not agree to change the supplemental NPRM to specify alternative marking methods. Revision 02 of Service Bulletin A320–57–1117 includes a note specifying that the varnish be applied with a single brush stroke, as subsequent brush strokes may cause damage to the lettering. However, if operators continue to have problems with the marking they may request an alternative method of compliance to obtain approval for using the black paint, in accordance with the procedures specified in paragraph (l) of this supplemental NPRM. We have made no change to the supplemental NPRM in this regard.

Request To Change Work Hours

US Airways states that the Costs of Compliance section in the original NPRM specifies 3 work hours (including an operational test) per airplane for the inspection specified in Service Bulletin A320–28–1102, and 6 work hours (including an operational test) for the inspection specified in Service Bulletin A320–57–1117. U.S. Airways notes that the service bulletins referred to in the Costs of Compliance section actually specify 10 and 47 hours respectively. U.S. Airways asks that the work hours be changed to specify between 24 and 30 work hours for accomplishing the inspections.

We do not agree to change the work hours as specified by U.S. Airways. The cost information describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. These numbers represent the time necessary to perform only the actions actually required by this supplemental NPRM. We recognize that, in doing the actions required by a supplemental NPRM, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. However, the work hours specified in Revision 02 of Service Bulletin A320–57–1117 were revised to include time necessary for additional procedures. Therefore, we have changed the work hours specified for the inspections in that service bulletin to 20 work hours. We have made no further change to this supplemental NPRM regarding this issue.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Difference Between the Supplemental NPRM and EASA Airworthiness Directive

The EASA airworthiness directive mandates changes to the MMEL. This supplemental NPRM will not mandate those MMEL changes because the limits imposed by the FAA-approved MMEL meet or exceed those mandated by the EASA airworthiness directive. We have coordinated this issue with the EASA.

Explanation of Change to Costs of Compliance Section

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The costs of compliance, below, reflect this increase in the specified hourly labor rate.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection specified in Service Bulletin A320–28–1102.	3	$80	$0	$240, per inspection cycle	70	$16,800, per inspection cycle.
Inspection specified in Service Bulletin A320–57–1117.	20	80	0	$1,600, per inspection cycle.	70	$112,000, per inspection cycle.
Modification specified in Service Bulletin A320–28–1149.	20	80	0	$1,600	70	$112,000.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism

implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22918; Directorate Identifier 2005–NM–172–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A319–100 and Model A320–200 series airplanes, certificated in any category, as identified in Airbus Service Bulletins A320–28–1102, Revision 02, dated July 10, 2006, and A320–57–1117, Revision 02, dated March 13, 2006.

Unsafe Condition

(d) This AD results from several incidents of detached plastic identification labels found floating in the wing fuel tanks. We are issuing this AD to prevent plastic identification labels being ingested into the fuel pumps and consequently entering the engine fuel feed system, which could result in an engine shutdown.

Compliance

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

Repetitive Inspections/Corrective Actions of Four Wing-Tank Fuel Pumps and Canisters

(f) Perform a detailed inspection for detached identification labels in the four wing-tank fuel pumps and canisters, and do all applicable corrective actions, by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1102, Revision 02, dated July 10, 2006; except as provided by paragraph (j) of this AD. Do all applicable corrective actions before further flight. Inspect at the earlier of the compliance times specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Within 600 flight hours after the effective date of this AD.

(2) Before the next flight following any wing-tank fuel pump failure.

(g) Repeat the inspection required by paragraph (f) of this AD thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, until accomplishment of paragraph (j) of this AD.

(1) For airplanes on which the inspections required by paragraph (i) of this AD have not been done: Repeat the inspection at intervals not to exceed the earlier of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) 600 flight hours.

(ii) Before the next flight following any wing-tank fuel pump failure.

(2) For airplanes on which the inspections required by paragraph (i) of this AD have been done: Repeat the inspection at intervals not to exceed the earlier of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) 3,000 flight hours.

(ii) Before the next flight following any wing-tank fuel pump failure.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Credit for Actions Accomplished Using Previous Service Information

(h) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1102, dated August 20, 2002; or Revision 01, dated February 11, 2005; are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Inspection/Corrective Actions of the Collector Cells, Surge Tank, Wing Fuel Tank and Vent Box

(i) Within 60 months after the effective date of this AD: Perform a detailed inspection for detached identification labels in the collector cells between ribs 1 and 2, the surge tank between ribs 22 and 26, and the wing fuel tank and vent box, and do any applicable corrective actions, by doing all the applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1117, Revision 02, including Appendix 01, dated March 13, 2006. Do any applicable corrective action before further flight.

Modification

(j) Before the accumulation of 162 months since first flight of the airplane, or within 6 months after the effective date of this AD, whichever is later: Modify the fuel strainers at the fuel pump and suction bypass intakes by doing all the actions in accordance with Airbus Service Bulletin A320–28–1149, dated June 14, 2006. Accomplishment of the modification in this paragraph ends the repetitive inspections required by paragraph (g) of this AD.

No Reporting Required

(k) Although Airbus Service Bulletin A320–28–1102, Revision 02, dated July 10, 2006, specifies submitting an inspection report to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(m) European Aviation Safety Agency airworthiness directive 2006–0236, dated August 10, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on March 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5666 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27712; Directorate Identifier 2006–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 series airplanes. The existing AD requires a one-time inspection of the potable water and drain lines in the cargo compartments for indications of overheating of the heater tape, exposed foam insulation, missing or damaged protective tape, or debris around the potable water fill and drain lines; and corrective action, if necessary. This proposed AD would require that the inspection of the water and drain lines be repetitively performed, using new service information, until new ribbon heaters are installed, which would terminate the repetitive inspections. This AD would also remove certain airplanes from the applicability. This proposed AD results from a report of a fire in the aft cargo compartment started by a potable water line heater tape. We are proposing this AD to prevent overheating of the heater tape on potable water fill and drain lines, which could ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane.

DATES: We must receive comments on this proposed AD by May 14, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27712; Directorate Identifier 2006–NM–233–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), you can visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On April 20, 2004, we issued AD 2004–09–10, amendment 39–13599 (69 FR 23647, April 30, 2004), for certain Boeing Model 747 series airplanes. That AD requires a one-time inspection of the potable water and drain lines in the forward and aft cargo compartments for indications of overheating of the heater tape, exposed foam insulation, missing or damaged protective tape, or debris around the potable water fill and drain lines; and corrective action, if necessary. That AD resulted from a report of a fire in the aft cargo compartment of a Boeing Model 767 series airplane due to heater tape on a water fill line overheating and igniting debris accumulated on or near the heater tape. Model 747 series airplanes have a configuration similar to that of the Model 767 and, under similar conditions, are subject to the same unsafe condition. We issued that AD to prevent overheating of the heater tape on potable water fill and drain lines, which could ignite accumulated debris or contaminants on or near the potable water fill and drain lines, and result in a fire in the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2004–09–10 explains that we considered the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006. The service bulletin describes procedures for the following actions:

- Repetitive inspections of the potable water supply and gray water drain lines for foreign object debris (FOD) and contamination;
- Removal of FOD and contamination on, near, or around the potable water supply and gray water drain lines;
- Repetitive inspections of the heater tape on the potable water supply and gray water drain lines for heat damage, exposed foam insulation, and missing/damaged protective tape;
- Replacement of all damaged heater tape;
- Covering of the exposed foam insulation with protective tape;
- Replacement of all missing or damaged protective tape; and
- Eventual replacement of the potable water supply and gray water drain line heater tape with new ribbon heaters, which eliminates the need for the repetitive inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2004–09–10. This proposed AD would require accomplishing the actions specified in Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006, described previously.

Costs of Compliance

There are about 1,114 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per hour. The cost of parts is minimal.

ESTIMATED COSTS

Action	Group	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost by group
Inspection (cost per inspection cycle)	1	3	$240	113	$27,120
	2 (Config. 1)	2	160	18	2,880
	2 (Config. 2)	2	160	17	2,720
	3	3	240	2	480
	4	3	240	0	0
	5	2	160	0	0
Modification	1	48	3,840	113	433,920
	2 (Config. 1)	7	560	18	10,080
	2 (Config. 2)	15	1,200	17	20,400
	2 (Config. 3)	8	640	17	10,880
	3	60	4,800	2	9,600
	4	61	4,880	0	0
	5	27	2,160	0	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13599 (69 FR 23647, April 30, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–27712; Directorate Identifier 2006–NM–233–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 14, 2007.

Affected ADs

(b) This AD supersedes AD 2004–09–10.

Applicability

(c) This AD applies to Boeing Model 747 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006.

Note 1: For the purposes of this AD, a cargo area that is not fully enclosed or not enclosed, as identified in Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006, is a floor without panels installed between all roller trays in the cargo compartment.

Unsafe Condition

(d) This AD results from a report of a fire in the aft cargo compartment started by a potable water line heater tape. We are issuing this AD to prevent overheating of the heater tape on potable water fill and drain lines, which could ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane.

Compliance

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

Inspections

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD: Do the initial inspections specified in Table 1 of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006. Correct any discrepancy before further flight in accordance with the service bulletin. Repeat the inspections at the applicable time specified in Table 1 of this AD.

(1) Within 18 calendar months since the date of issuance of the original standard airworthiness certificate or within 18 calendar months since the date of issuance of the original export certificate of airworthiness.

(2) Within 90 calendar days after the effective date of this AD.

TABLE 1.—INSPECTIONS

Do a general visual inspection of the forward and aft cargo compartments, as applicable, for—	And repeat the inspection at intervals not to exceed—	Until—
Foreign object debris (FOD) or contamination on, near, or around the potable water supply and gray water drain lines.	600 flight hours	The heater tape replacement required by paragraph (g) of this AD is done.
Indications of heat damage, exposed foam insulation, or missing or damaged protective tape of all heater tape on the potable water supply and gray water drain lines.	1,800 flight hours	The heater tape replacement required by paragraph (g) of this AD is done.

Terminating Action

(g) At the applicable time specified in Table 2 of this AD: Replace the heater tape on the potable water supply and gray water drain lines of the forward and aft cargo compartments, as applicable, with Adel Wiggins ribbon heaters. Do the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–30A2080, Revision 2, dated September 14, 2006. This replacement terminates the requirements of paragraph (f) of this AD.

TABLE 2.—COMPLIANCE TIME FOR TERMINATING ACTION

For airplanes on which the heater tape has—	Replace the heater tape at the later of—	
(1) Not been replaced before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002; Revision 1, dated October 16, 2003; or Revision 2, dated December 16, 2004.	Within 42 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	24 months after the effective date of this AD.
(2) Been replaced before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002; Revision 1, dated October 16, 2003; or Revision 2, dated December 16, 2004.	Within 42 months after the heater tape was replaced.	24 months after the effective date of this AD.

Provisions for Previous Accomplished Work

(h) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–30A2080—either the original version dated December 16, 2004, or Revision 1, dated August 18, 2005—are acceptable for compliance with the corresponding requirements of this AD; except, for Group 2, Configuration 2 and Configuration 3 airplanes, as defined in Revision 2 of the service bulletin, additional work is required in the forward cargo compartment, as specified in Parts 1, 2, and 3 of the service bulletin and required by this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on March 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5667 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27713; Directorate Identifier 2006–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes. This proposed AD would

require, for certain airplanes, modification of the upper bearing of the main landing gear (MLG) shock strut. This proposed AD would also require, for certain airplanes, revising the DHC–8 Maintenance Program Manual to include the MLG shock strut servicing task. This proposed AD results from reports of over-extension of the MLG shock strut piston, which allows the torque links to go over-center and rest on the piston. We are proposing this AD to prevent loss in shock absorption during touchdown and failure of the shock strut housing, which could result in a subsequent loss of directional control.

DATES: We must receive comments on this proposed AD by April 30, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27713; Directorate Identifier 2006–NM–240–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes. TCCA advises that there have been six cases reported in which the main landing gear (MLG) shock strut piston over-extended, allowing the torque links to go over-center and rest on the piston. Investigation has revealed that over-extension of the shock strut resulted from damage to the upper bearing and seal carrier, caused by a loss of internal damping.

Over-extension of the MLG shock strut piston, if not corrected, could result in loss in shock absorption during touchdown and failure of the shock strut housing, which could result in a subsequent loss of directional control.

Relevant Service Information

Bombardier has issued Service Bulletin 8–32–144, Revision 'A,' dated April 29, 2002, including Messier-Dowty Service Bulletin M–DT SBDHC8–32–82, Revision 1, dated July 5, 2001 (for Model DHC–8–311, –314, and –315 airplanes). The service bulletin describes procedures for modifying the upper bearing in each MLG. The modification includes an inspection of the two halves of the upper bearing for wear and damage, the removal of the needle roller from the upper bearing, an inspection of the cylinder bore for damage and wear, and corrective action if necessary. The corrective action includes replacing the upper bearing with a new bearing and contacting the parts manufacturer if damage or wear that exceeds the maximum diameter is found on the cylinder bore.

Bombardier has issued the following de Havilland Dash 8 maintenance task cards to the applicable Bombardier DHC–8 Maintenance Program Manual (Program Support Manuals 1–8–7, 1–82–7, and 1–83–7). These tasks describe procedures for servicing the MLG shock struts:

- Dash 8 Series 100 Maintenance Task Card 3210/15, dated June 22, 2005;
- Dash 8 Series 200 Maintenance Task Card 3210/15, dated June 22, 2005; and
- Dash 8 Series 300 Maintenance Task Card 3210/15, dated November 29, 2005.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2006–14, effective July 21, 2006, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require, for certain airplanes, accomplishing the actions specified in the service bulletin described previously, and, for certain airplanes, revising the applicable DCH–8 Maintenance Program Manual to include the MLG shock strut servicing Task 3210/15, except as discussed

under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or TCCA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or TCCA approve would be acceptable for compliance with this proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	4	$80	$274	$594	Up to 135	Up to $80,190.
Manual Revision	1	80	0	80	135	$10,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2007–27713; Directorate Identifier 2006–NM–240–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 30, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes, certificated in any category; serial numbers 003 through 618 inclusive.

Unsafe Condition

(d) This AD results from reports of over-extension of the main landing gear (MLG) shock strut piston, which allows the torque links to go over-center and rest on the piston. We are issuing this AD to prevent loss in shock absorption during touchdown and failure of the shock strut housing, which could result in a subsequent loss of directional control.

Compliance

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

Modification of the Upper Bearing

(f) For Model DHC–8–311, –314, and –315 airplanes, serial numbers 202 through 516 inclusive, with MLG shock struts having any serial number DCL3501/90 through DCL3768/97 inclusive installed: Within 3,000 flight hours after the effective date of this AD, modify the upper bearing in each MLG (including doing inspections of the upper bearing and cylinder bore for wear and damage, and doing all applicable corrective actions) in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–144, Revision 'A,' dated April 29, 2002, including Messier-Dowty Service Bulletin M–DT SBDHC8–32–82, Revision 1, dated July 5, 2001, except if wear exceeds the maximum diameter specified in the service bulletin for the cylinder bore or if damage is found on the cylinder bore, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). Do all applicable corrective actions before further flight.

Revision of the Maintenance Program Manual

(g) For Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes, serial numbers 003 through 614 inclusive: Within 30 days after the effective date of this AD, revise Part 1 of the applicable DHC–8 Maintenance Program Manual by incorporating the applicable MLG shock strut servicing Task 3210/15 specified in Table 1 of this AD.

Note 1: This may be done by inserting copies of the applicable task into the applicable maintenance program manual. When these tasks have been included in the general revisions of the applicable

maintenance program manual, the general revisions may be inserted in the applicable maintenance program manual and the copy of the task may be removed from the maintenance program manual.

TABLE 1.—TASKS

Task—	Dated—	To the program support manual (PSM)—	For model—
Dash 8 Series 100 Maintenance Task Card 3210/15.	June 22, 2005	1–8–7	DHC–8–100 Series Airplanes.
Dash 8 Series 200 Maintenance Task Card 3210/15.	June 22, 2005	1–82–7	DHC–8–200 Series Airplanes.
Dash 8 Series 300 Maintenance Task Card 3210/15.	November 29, 2005	1–83–7	DHC–8–300 Series Airplanes.

Parts Installation

(h) After the effective date of this AD, no person may install a part identified in paragraphs (h)(1) and (h)(2) of this AD, as a replacement during the repair or overhaul of any shock strut assembly, on any airplane.

(1) Upper bearing, part number 10130–3 or 10130–551.

(2) Damper ring, part number 10129–3 or 10129–551.

(i) After the effective date of this AD, only the parts identified in paragraphs (i)(1) and (i)(2) of this AD may be installed on any airplane as replacement upper bearings and damper rings during the repair or overhaul of any shock strut assembly, except as provided by paragraph (j) of this AD.

(1) Upper bearing, part number 10130–5.

(2) Damper ring, part number 10129–5 or 10129–533.

(j) After the effective date of this AD, only MLGs with a reworked, oversize cylinder bore (part number identified in the applicable component maintenance manual (CMM)) that have parts identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD used in accordance with the applicable CMM may be installed on any airplane.

(1) Upper bearing, part number CRS85–167–11.

(2) Damper ring, part number CRS85–167–31 or CRS85–167–33.

(3) Seal carrier, part number CRS85–167–21.

Credit for Actions Done Using Previous Service Information

(k) Modifications accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 8–32–144, dated August 10, 1998, including Messier-Dowty Service Bulletin M–DT SBDCH8–32–82, dated March 9, 1998, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(m) Canadian airworthiness directive CF–2006–14, effective July 21, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on March 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5668 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26966; Directorate Identifier 99–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce Corporation (RRC) AE 3007A and AE 3007C series turbofan engines. That AD currently prohibits any flight following a ground engine start where the engine oil temperature is below 32 °F (0 °C), unless certain preflight operational procedures are followed. This proposed AD would also require those actions, and would also require a terminating action. This proposed AD would supersede the compliance requirements of AD 99–02–51 and all related alternative methods of compliance (AMOCs). This proposed AD results from design improvements to components in the accessory gearbox air turbine starter mounting pad. We are proposing this AD to prevent an in-flight engine shutdown due to loss of engine oil from the starter shaft seal.

DATES: We must receive any comments on this proposed AD by May 29, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; telephone (317) 230–3774; fax (317) 230–8084; e-mail: *indy.pubs.services@rolls-royce.com*, to get the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7836; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–

2007–26966; Directorate Identifier 99–NE–01–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Docket Number Change

We are transferring the docket for this proposed AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–26966. The old Docket No. became the Directorate Identifier, which is 99–NE–01–AD.

Discussion

On March 29, 1999, we issued AD 99–02–51, Amendment 39–11108 (64 FR 16339, April 5, 1999), applicable to RRC AE 3007A and AE 3007C series turbofan engines. That AD prohibits any flight following a ground engine start where the engine oil temperature is below 32 °F (0 °C), unless certain preflight operational procedures are followed to ensure that there is no excessive loss of oil from leakage at the air turbine starter shaft. That action resulted from reports of in-flight engine shutdowns attributed to loss of engine oil from the starter shaft seal.

Since we issued AD 99–02–51, RRC, Cessna Aircraft Company, and Empresa Brasileira de Aeronautica S.A. (EMBRAER) issued Service Bulletins (SBs) that describe a procedure to install a cap on the accessory gearbox starter pad drain fitting to prevent rapid engine oil loss during flight. These SBs were approved in 1999 as AMOCs to the requirements of AD 99–02–51. In September 2001, RRC developed single- and multi-orifice restrictors that were approved for use also as an AMOC that replaced the drain fitting cap in the previous AMOCs. RRC has since improved the design for the multi-orifice restrictor which is also approved as an AMOC. Since we approved these AMOCs, RRC released an improved seal for the accessory gearbox air turbine starter mounting pad. On January 19, 2006, we approved a terminating action AMOC incorporating the improved seal. That AMOC requires no cap or restrictor on the starter drain, but does not require removal of those components either. This proposed AD would mandate the removal of the AMOC configurations incorporating caps or restrictors and the installation of an open drain adapter.

Relevant Service Information

We have reviewed and approved the technical contents of the following RRC SBs:

- SB No. AE 3007A–72–321 AE 3007C–72–250, Revision 2, which describes procedures for installing an improved starter shaft seal.
- SB No. AE 3007C–72–223, Revision 1, and SB No. AE 3007A–72–330, Revision 1, which describe procedures for installing an open starter drain adapter.
- SB No. AE 3007A–72–274, Revision 1, which describes procedures for removing the drain cap or starter drain adapter on AE 3007A series engines.

The SB issue dates do not appear in this proposed AD because we agreed to allow RRC to assign the final rule AD issue date to them, as they want to reference the AD number in the SBs.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would:

- Prohibit before further flight, any flight following a ground engine start where the engine oil temperature is below 32 °F (0 °C), unless certain preflight operational procedures are followed to ensure that there is no excessive loss of oil from leakage at the air turbine starter shaft; and
- Require terminating action to the prohibition requirements of the existing AD, by removing from service certain seal P/Ns from the accessory gearbox air turbine starter mounting pad and installing an improved seal; and
- Require removing certain P/N drain caps, drain adapters, and orifice inserts, and installing an open adapter on the starter pad drain.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 1,868 RRC AE 3007A and AE 3007C series turbofan engines installed on aircraft of U.S. registry. We also estimate that it would take about 4 work-hours per engine to perform the proposed terminating action, and that the average labor rate is $80 per work-hour. Required parts would cost about $2,917 per engine. Based on these figures, if all engines incorporated the terminating action, we estimate the total cost of the proposed AD to U.S. operators to be $6,046,100.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–11108 (64 FR 16339, April 5, 1999) and by adding a new airworthiness directive to read as follows:

Rolls-Royce Corporation (formerly Allison Engine Company, Inc.): Docket No. FAA–2007–26966; Directorate Identifier 99–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 29, 2007.

Affected ADs

(b) This AD supersedes AD 99–02–51, Amendment 39–11108.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company, Inc.) AE 3007A and AE 3007C series turbofan engines. These engines are installed on, but not limited to, Cessna Aircraft Company 750 series, and Empresa Brasileira de Aeronautica S. A. (EMBRAER) EMB–135 and EMB–145 series airplanes.

Unsafe Condition

(d) This AD results from design improvements to components in the accessory gearbox air turbine starter mounting pad. We are issuing this AD to prevent an in-flight engine shutdown due to loss of engine oil from the starter shaft seal.

Compliance

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

Prohibited Flights

(f) All flights after ground engine starts at engine oil temperatures below 32 °F (0 °C), are prohibited except as follows:

(1) If the engine oil temperature has dropped below 32 °F (0 °C), before flight, perform a high-power leak check on each engine (at least three minutes at takeoff power).

(2) Oil consumption greater than 0.32 quart per hour (303 cc per hour) is not permitted. Instructions for performing the high-power leak check for the AE 3007A series engines can be found in the Rolls-Royce AE 3007A Series Maintenance Manual, TASK 72–00–00–700–801, SUBTASK 72–00–00–790–002. Leak check limits for the AE 3007A series engines can be found in the Rolls-Royce AE 3007A Series Maintenance Manual, TASK 71–00–00–200–801.

(3) Instructions for performing the high-power leak check for the AE 3007C series engines (including leak check limits) can be found in the Rolls-Royce AE 3007C Series Maintenance Manual, TASK 72–00–00–700–801, SUBTASK 72–00–00–790–002.

Terminating Action

(g) No later than September 30, 2009, as terminating action to the requirements in paragraph (f) through (f)(3) of this AD, do the following, as applicable to your engine model and configuration:

(1) Remove seal part number (P/N) 42520–71, 42520–196–X, 99004–1–6, 42520–75, or 42520–167, from the accessory gearbox (AGB) air turbine starter mounting pad.

(2) Install a new seal, P/N AS3209–026, or other serviceable part, to the shaft of the starter mounting pad.

(3) Install a new bearing locknut, P/N 42520–170, or other serviceable part, and an AGB air turbine starter mounting pad mechanical seal, P/N 42520–192, or other serviceable part.

(4) Use paragraphs 2. through 2.G. of the Accomplishment Instructions of RRC Service Bulletin (SB) No. AE 3007A–72–321 / AE 3007C–72–250, Revision 2, to do the removals and installations.

(5) For AE 3007A series engines, remove the drain cap or starter drain adapter. Use paragraphs 2. through 2.C.(4)(c) of the Accomplishment Instructions of RRC SB No. AE 3007A–72–274, Revision 1, to do the removal.

(6) For AE 3007A series engines, install an open starter drain adapter. Use paragraphs 2. through 2.C.(2) of the Accomplishment Instructions of RRC SB No. AE 3007A–72–330, Revision 1, to do the installation.

(7) For AE 3007C series engines, install an open starter drain adapter. Use paragraphs 2. through 2.E.(2) of the Accomplishment Instructions of RRC SB No. AE 3007C–72–223, Revision 1, to do the installation.

Definition

(h) A serviceable part is any FAA-approved part not being removed from service, or not otherwise specifically addressed by this AD action. Serviceable parts may be available from the original equipment manufacturer or through Part Manufacturer Approval sources.

Prohibition of Seals

(i) Once the terminating action in this AD is performed on an engine, seal P/Ns 42520–71, 42520–196–X, 99004–1–6, 42520–75, and 42520–167, are prohibited from being installed on the air starter mounting pad.

Previous Credit

(j) Previous credit is allowed for the terminating action in paragraphs (g)(1) through (g)(7) of this AD, that was done using the Accomplishment Instructions of the SBs listed in the following Table 1, before the effective date of this AD:

TABLE 1.—SBS ALLOWING PREVIOUS CREDIT

For AE 3007A Series Engines
(1) Engine—Accessory Drive Gearbox Assembly—New Starter Shaft Seal; RRC SB No. AE 3007A–72–321/AE 3007C–72–250, Revision 1, dated November 7, 2005; and
(2) Engine—Accessory Gearbox Starter Pad Drain—Remove The Drain Cap or Starter Drain Adapter; RRC SB No. AE 3007A–72–274, dated January 19, 2006; and
(3) Engine—Accessory Gearbox Starter Pad Drain—Install the Open Starter Drain Adapter (23083402 or 23077526); RRC SB No. AE 3007A–72–330, dated January 19, 2006.
For AE 3007C Series Engines
(4) Engine—Accessory Drive Gearbox Assembly—New Starter Shaft Seal; RRC SB No. AE 3007A–72–321/AE 3007C–72–250, Revision 1, dated November 7, 2005; and

TABLE 1.—SBS ALLOWING PREVIOUS CREDIT—Continued

(5) Engine—Accessory Gearbox Starter Pad Drain—Install the Open Starter Drain Adapter (23077526 or 23083403); RRC SB No. AE 3007C–72–223, dated January 19, 2006.

Alternative Methods of Compliance (AMOC)

(k) The Manager, Chicago Aircraft Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

(l) AMOCs approved for AD 99–02–51 are not approved as AMOCs for this AD.

Related Information

(m) Contact Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *kyri.zaroyiannis@faa.gov;* telephone (847) 294–7836; fax (847) 294–7834, for more information about this AD.

Issued in Burlington, Massachusetts, on March 23, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–5775 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[New Docket No. OSHA—2007–0012, Old Docket No. S–204A]

RIN 1218–AC02

Notice of Availability of the Regulatory Flexibility Act Review of the Occupational Safety Standard for Excavations

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of availability.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has completed a review of its Excavations Standard pursuant to section 610 of the Regulatory Flexibility Act and section 5 of Executive Order 12866 on Regulatory Planning and Review. In 1989, OSHA issued a final, revised Excavations Standard to reduce deaths and injuries from excavation and trenching activities in the construction industry. This regulatory review concludes that the 1989 Excavations Standard has reduced deaths from approximately 90 to 70 per year while real construction activity has increased by 20%. The review also concludes that the Standard has not had a negative impact on small business, that the cost of control technology has been reduced, that the Standard is understandable and does not conflict with other rules, and that commenters agree that the Standard should be retained. Based on this review, OSHA concludes that the Excavations Standard should remain in effect, but OSHA will issue some improved guidance and training materials, based on commenters suggestions.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888; Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, New Docket No. OSHA–2007–0012, Old Docket No. S–204A, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA's Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.t. The main text of the report, this **Federal Register** Notice and any news releases will become available at the OSHA Webpage at *http://www.OSHA.gov.* Electronic copies of this **Federal Register** Document, the full text of the report, comments and referenced documents are or will become available at *http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: General information: Joanna Dizikes Friedrich, OSHA Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1939. Technical inquiries about the Excavations Standard: Garvin Branch, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020. Press inquiries: Elaine Fraser, OSHA Office of Communications, N–3637, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) has completed a ''lookback'' review of its Excavations Standard, 29 CFR part 1926, Subpart P, §§ 1926.650 to 1926.652 and Appendices A to F, titled ''Regulatory Review of 29 CFR part 1926, Subpart P: Excavations, March 2007'' (''Regulatory Review''). This **Federal Register** document announces the availability of the Regulatory Review and briefly summarizes it.

The Regulatory Review was undertaken pursuant to and meets the requirements of section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and section 5 of Executive Order 12866 (59 FR 51739, Oct 4, 1993). The purpose of a review under section 610 of the Regulatory Flexibility Act is to determine whether a rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes to minimize any significant impact of the rule on a substantial number of small entities. In making this determination, the Agency considers the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules; and to the extent feasible, with state and local governmental rules; and

(5) The length of time since the rule has been evaluated and the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule.

Under section 5 of Executive Order 12866, agencies examine whether rules have become unjustified or unnecessary as a result of changed circumstances, whether they are both compatible with other rules and not duplicative or inappropriately burdensome in the aggregate, whether they are consistent with the President's priorities and the principles set forth in the Executive Order, within applicable law, and whether their effectiveness can be improved.

On October 31, 1989, OSHA issued a final, revised Standard for excavation and trenching, at 54 FR 45894. The revision updated the previous standard by simplifying many of the existing provisions, adding and clarifying definitions, eliminating duplicate provisions and ambiguous language, and giving employers added flexibility in providing protection for employees. In addition, the Standard provided several new appendices. One appendix provided a consistent method of soil classification. Others provided sloping

and benching requirements, pictorial examples of shoring and shielding devices, timber tables, hydraulic shoring tables and section charts that provide a graphic summary of the requirements contained in the Standard.

On August 21, 2002, OSHA published a **Federal Register** document requesting public comments on the Excavations Standard and, specifically, on all issues raised by section 610 of the RFA and section 5 of Executive Order 12866 (67 FR 54103). The Regulatory Review summarizes the public comments and responds to them, and makes the following major findings:

• There is a continued need for the Standard. The annual number of trenching and excavation fatalities has declined from an estimated 90 fatalities per year prior to the enactment of the 1989 Standard, to approximately 70 per year since 1990.

This 22% reduction is even more impressive given the 20% real increase in construction activity over this period. Therefore, in relation to increased construction activity, fatalities have been reduced by more than 40%. Although the Standard has improved safety, it remains needed in light of the ongoing occurrence of related fatalities, most of which result from violations of the Standard. OSHA intends to expand outreach and maintain enforcement to further reduce fatalities.

• The Standard does not impose an unnecessary or disproportionate burden on small business or on industry in general. The cost of protective systems has decreased by 10 percent in real dollars between 1990 and 2001. The number of small businesses engaged in excavation activity has increased, and the percentage of excavation work done by small business has increased. Real construction activity has increased.

• There is no indication that employers are unable to comply due to the complexity of the revised Standard. Nonetheless, public comments suggested some ways in which the Standard might be simplified or clarified (although some argued that any changes would only serve to confuse and discourage those who now understand and follow the Standard). The expanded outreach will address these matters.

• In general, the Standard does not overlap, duplicate, or conflict with other state or Federal rules. Several commenters, however, identified a possible conflict between the Excavations Standard and OSHA's standard for confined spaces. OSHA will address this issue in its future rulemaking for confined spaces in construction.

• Economic and technological trends have not reduced the need for the Standard. However, the development of so-called ''trenchless'' technologies (e.g., directional boring machines) has added a new dimension to excavation work (including additional hazards) that OSHA will monitor.

• Public comments contained some specific suggestions for how the Standard could be made more effective, although the comments were divided as to whether or not the Standard should be modified. In light of the effectiveness of the Standard, the certainty it has created, and limited regulatory resources, major modifications are not of high priority.

• The National Transportation Safety Board (NSTB) recommended that OSHA amend the Excavations Standard to require employers to notify appropriate authorities after excavation activities create a gas leak or leak of other hazardous substances. Since then, the ''Pipeline Inspection, Protection, Enforcement, and Safety Act (PIPES) of 2006'' has been enacted. Section 2 of PIPES requires all persons (including employers) engaged in demolition, excavation, tunneling, or construction to immediately call 911 if: (1) They damage a pipeline that may endanger life or cause serious bodily harm or damage to property; and (2) such damage results in the escape of flammable, toxic, or corrosive gas or liquid. OSHA will monitor the implementation of PIPES and consider whether amending the Excavations Standard as suggested by NTSB is necessary and appropriate.

• The Standard remains consistent with the President's priorities to the extent that it has produced the intended benefits, a reduction in trenching and excavation fatalities and injuries, while not causing negative economic effects.

Based on the findings of this review, OSHA finds that the Excavations Standard should be continued. OSHA also believes that further increases in safety might be achieved through increased outreach and training.

Signed at Washington, DC, this 19th day of March, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–5609 Filed 3–28–07; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0774; FRL–8284–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to Indiana's State Implementation Plan (SIP) submitted on August 25, 2006, revising its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). Indiana held public hearings on the submittal on December 7, 2005, and March 1, 2006.

DATES: Comments must be received on or before April 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0774, 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: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@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: February 27, 2007.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

[FR Doc. E7–5654 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0976; FRL–8292–9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Ohio on February 14, 2006 and October 6, 2006, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas. Ohio has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Ohio's fuel requirements into the Ohio SIP because EPA has found that the requirements are necessary for the Cincinnati and Dayton areas to achieve the 8-hour ozone national ambient air quality standard (NAAQS). This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before April 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0976, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *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.
- *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 a.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0976. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the 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 legal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. Description of the SIP Revision and EPA's Action.
A. What Is the Background for This Action?
B. What Is Reid Vapor Pressure?
C. What Are the Relevant Clean Air Act Requirements?
D. How Has the State Met the Test Under Section 211(c)(4)(C)?
E. What Are the Relevant Energy Policy Act Requirements?
F. How Has the State Met the Relevant Energy Policy Act Requirements?
G. Why Is EPA Taking This Action?
H. What Other Relevant Materials Has the State Submitted?
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *http://*

www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Description of the SIP Revision and EPA's Action

A. What Is the Background for This Action?

On April 15, 2004, the EPA designated 5 counties in Cincinnati, Ohio (Hamilton, Butler, Clinton, Warren and Clermont counties—Cincinnati-Hamilton, OH-KY-IN) and 4 counties in Dayton, Ohio (Clark, Greene, Miami, and Montgomery counties—Dayton-Springfield, OH) as nonattainment for the 8-hour ozone standard. Both areas have been designated Basic nonattainment with respect to the 8-hour ozone standard and they are required to attain the standard as expeditiously as practicable, but no later than June 2009.

As part of the State of Ohio's (Ohio) efforts to bring these areas into attainment, the State is adopting and implementing a broad range of ozone control measures including control of emissions from auto refinishing operations, the reduction of VOC emission from portable fuel containers, the adoption of industrial solvent degreasing rules, and the implementation of a 7.8 pound per square inch (psi) RVP fuel program.

Ohio originally proposed to replace the State's vehicle inspection and maintenance (I/M) program in Cincinnati and Dayton, which was discontinued by the State on December 31, 2005, with the requirement to supply 7.8 psi RVP gasoline to these areas starting in 2006. However, the State has since modified its original request and has asked that EPA act on the state's fuel waiver request to allow the use of 7.8 psi RVP gasoline in both areas. On February 14, 2006, Ohio submitted the fuel waiver request as a SIP revision and the submittal included adopted amended rules under Ohio Administrative Code Chapter 3745–72 ''Low Reid Vapor Pressure Fuel Requirements'' to require the use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas beginning on June 1, 2006.

Soon after the State's February 14, 2006 submittal, the American Petroleum Institute (API) appealed the State's 7.8 psi RVP rule on the basis that there was insufficient time to implement the rule and that EPA had not yet issued a waiver under section 211(c)(4)(C) of the CAA, as amended. EPA conducted an informal survey of gasoline suppliers and determined that there was not enough 7.8 psi RVP gasoline to supply the Cincinnati and Dayton nonattainment areas during the 2006 ozone season. As part of the State's settlement with API on its appeal, Ohio agreed to revise the rule to delay the effectiveness of the rule until twelve months following the approval of a fuel waiver by EPA in order to ensure that there is sufficient time for the regulated community to prepare for the change.

On July 10, 2006, the Ohio Environmental Protection Agency (OEPA) adopted amended rules under the Ohio Administrative Code Chapter 3745–72 ''Low Reid Vapor Pressure Fuel Requirements'' to modify the implementation date for the required use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas to be one year after the approval of a fuel waiver under CAA amendments section 211(c)(4)(C). Public hearings on the amended rules were held on June 2, 2006, in Columbus, Ohio and the rules became effective on July 17, 2006.

The OEPA submitted these amended low-RVP rules to EPA as a revision to the SIP on October 6, 2006. As part of the October 6, 2006 submittal, OEPA included additional technical support for the SIP revision, including documentation supporting the State's request to waive the CAA preemption of State fuel controls pursuant to section 211(c)(4) of the CAA. The documentation demonstrates that a low-RVP fuel is critical to the Cincinnati and Dayton ozone nonattainment areas attainment of the 8-hour ozone standard.

B. What Is Reid Vapor Pressure?

Reid Vapor Pressure, or RVP, is a measure of a gasoline's volatility at a certain temperature and is a measurement of the rate at which gasoline evaporates and emits VOCs; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its more volatile components, such as butane. Lowering RVP in the summer months can offset the effect of high summer temperatures upon the volatility of gasoline, which, in turn, lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

The primary emission reduction benefit from low-RVP gasoline used in motor vehicles comes from reductions in VOC evaporative emissions; exhaust emission reductions are much smaller. Because oxides of nitrogen (NO_X) are a product of combustion from motor vehicles, they will not be found in evaporative emissions, and low-RVP gasoline will have little or no effect on NO_X.

C. What Are the Relevant Clean Air Act Requirements?

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to

the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standard in a SIP:

> Only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA's August, 1997 ''Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs'' gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: (1) Identifying the quantity of reductions needed to reach attainment; (2) identifying other possible control measures and the quantity of reductions each measure would achieve; (3) explaining in detail which of those identified control measures are considered unreasonable or impracticable; and, (4) showing that, even with the implementation of all reasonable and practicable measures, the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at Ohio's demonstration that the low-RVP fuel control is necessary in accordance with Section 211(c)(4)(C) of the CAA and agrees with the State's conclusion that a fuel measure is needed to achieve the 8-hour ozone NAAQS.

The SIP submittal contains: (1) 7.8 low vapor pressure gasoline waiver request for Cincinnati and Dayton; (2) Amendments to Ohio Administrative Code, Chapter 3745–72 ''Low Reid Vapor Pressure Fuel Requirements'', effective January 16, 2006 and July 17, 2006; (3) Additional support for 7.8 Reid Vapor Pressure fuel waiver dated October 6, 2006; and, (4) the public hearing records dated December 7, 2005 and June 2, 2006.

D. How Has the State Met the Test Under Section 211(c)(4)(C)?

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a State from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted federal RVP controls under CAA sections 211(c) and 211(h). See 56 FR 64704 (December 12, 1991). These regulations are found in 40 CFR 80.27. The State of Ohio is currently required under the federal rule to meet a 9.0 psi RVP standard. See 40 CFR 80.27(a)(2).

As stated previously, a State may prescribe and enforce an otherwise preempted low-RVP requirement only if the EPA approves the control into the State's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other measures that would bring about timely attainment exist or that such measures exist but are either not reasonable or practicable. Thus, to determine whether Ohio's low-RVP rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 8-hour ozone NAAQS.

To estimate the emission reductions needed in the Cincinnati and Dayton areas to achieve attainment of the ozone NAAQS, EPA used modeling information developed by the Lake Michigan Air Directors Consortium (LADCO). This analysis used the CAMx (Comprehensive Air Quality Model with Extensions) photochemical dispersion model to simulate expected concentrations throughout much of the Eastern United States. Using procedures recommended by EPA, LADCO used modeling results for 2002 and 2009 to estimate the reduction in ozone concentrations expected to occur by 2009. These results project that the emission reductions expected to occur by 2009 in the Cincinnati and Dayton areas will bring the areas into attainment of the 8-hour ozone standard. This modeling reflects emission reductions as if the vehicle inspection and maintenance program were still operating but with no reductions from low RVP gasoline. LADCO also modeled conditions for 2008 and then projected concentrations to continue to exceed the standard. Therefore, EPA finds the level of emission reductions achieved by 2009 to represent the reductions necessary to attain the standard.

Interpretation of the quantity of emission reductions needed to attain the ozone standard is complicated by the fact that ozone results from chemical reactions involving both VOC and NO_X. A given air quality improvement (e.g., attaining the standard) can result from a variety of combinations of reductions of the emissions of these two precursors. That is, the quantity of VOC emission reduction needed to attain the standard is in part a function of the quantity of NO_X emission reduction expected to occur.

While other combinations of VOC and NO_X emission reduction would also be expected to provide for attainment, EPA is using the combination of VOC and NO_X emissions modeled by LADCO to define the emission reductions needed to attain the standard in the Cincinnati and Dayton areas. By this means, EPA determined that the necessary emission reductions for VOC in the Cincinnati area is 47 tons per day and in the Dayton area is 21 tons per day, for a total of 68 tons per day. EPA considers these amounts as the necessary VOC emissions reductions based on an expectation that NO_X emissions will simultaneously be reduced by 202 tons per day in the Cincinnati area and by 39 tons per day in the Dayton area, for a total of 241 tons per day.

Some of these emission reductions will be achieved by programs that have already been adopted, most notably including the Federal Motor Vehicle Control Program. In order to assess the need for low RVP fuel, EPA sought to estimate the quantity of emission reduction needed for attainment by 2008 beyond the reductions provided by these programs. Because the modeling suggests attainment by 2009, one year after the date by which attainment must begin, the one year's emission reduction (from 2008 to 2009) is an approximation of the additional emission reduction needed for the area to begin attaining by 2008. EPA estimated this one year's emission reduction as 1/7 of the emission reduction expected between 2002 and 2009. Thus, EPA estimated that the additional emission reduction needed will be approximately 7 tons per day in the Cincinnati area and approximately 3 tons per day in the Dayton area, for a total of approximately 10 tons per day in the Cincinnati/Dayton area.

Some features of these estimates warrant note. First, the deadline for Cincinnati and Dayton to meet the air quality standard is 2009, which means that any VOC reductions contributing to attainment would need to occur during the 2008 ozone season. Thus, the emission inventory and modeling information from LADCO do not directly assess whether the set of measures assumed in the analysis will suffice to assure timely attainment. Second, the emission inventory includes emission reductions that would be expected were Ohio to restart a vehicle inspection and maintenance program and does not include the emission reductions that are expected from use of low RVP gasoline. Third, while EPA believes that the modeling is adequate for purposes here, EPA recognizes that Ohio and other states are continuing to refine their emission inventories and modeling analyses, and EPA is not attempting to evaluate here whether the analysis would constitute an adequate attainment demonstration as required under CAA section 172(c)(1). Moreover, under CAA section 211(c)(4)(C)(i), EPA is allowed to make a finding of necessity even if the plan for an area does not contain an approved demonstration of timely attainment. Fourth, EPA recognizes the uncertainties inherent in modeling. For this reason, EPA guidance recommends that states supplement the modeling with additional analyses to be used as weight of evidence in assessing whether the modeling overstates or understates the air quality improvement that is expected. The above estimates of reductions needed to attain the standard in the Cincinnati and Dayton areas are taken directly from LADCO modeling results without considering any additional analyses that Ohio may submit along with its attainment demonstrations.

The State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be adopted and used to attain the 8-hour ozone NAAQS by the required deadline.

The State evaluated a wide range of control measures, considering the following factors: VOC emission reduction potential; ability to implement the control measure expeditiously; cost; and, ease of implementation. Ohio summarized the results of this evaluation in a document entitled ''RVP Rule Waiver Request Addendum.''

After evaluating a wide range of other controls for their reasonableness and practicability, four measures did rise to the top: the reduction of VOC emission from auto refinishing operations, the reduction of VOC emissions from portable fuel containers, the adoption of rules for industrial solvent degreasing, and, the lowering of gasoline vapor pressure to 7.8 psi during the summer months. Ohio determined that the rest of the control measures would not achieve emission reductions early enough to bring about timely attainment, were technically impossible to implement, and, were either unreasonable or impracticable.

In the case of auto refinishing operations, the State has adopted rules that require high volume, low pressure spray equipment and additional work practice requirements. The State's analysis indicates that the application of such controls could yield emission reductions comparable to those from other source categories in the range of approximately 0.7 tons per day (including 0.4 tons per day in the Cincinnati area and 0.3 tons per day in the Dayton area), in a time period compatible with the State's commitment to attain the 8-hour NAAQS as expeditiously as possible. Ohio's evaluation also showed that VOC reductions in the range of 4.3 tons per day (including 2.6 tons per day from the Cincinnati area and 1.7 tons per day in the Dayton area) could be achieved through the adoption of industrial solvent cleaning (degreasing) regulations. In addition, the implementation of statewide rules requiring the use of newly designed spill proof portable fuel containers would achieve a modest reduction of about 0.4 tons per day across the Cincinnati/Dayton area by 2008.

The State's analysis identified that adoption of all measures determined to be reasonable and practicable would at most result in approximately 5.2 tons per day of emission reductions by 2008. Thus, even with implementation of all reasonable and practicable non-fuel control measures, additional VOC reductions are necessary.

Ohio's 7.8 psi RVP fuel requirement, which includes a 1 psi exemption for ethanol blended fuels, is calculated to achieve approximately 4.6 tpd of VOC reductions in Cincinnati and 4.2 tpd of VOC reductions in Dayton beginning the summer of 2008. EPA believes these emission reductions are necessary to achieve the ozone NAAQS in both areas. EPA is basing today's action on the information available to us at this time, which indicates that adequate reasonable and practicable non-fuel measures that would achieve these needed emission reductions, and protect Ohio's air quality in a timely manner are not available to the State. Hence, EPA finds that the 7.8 psi RVP fuel program is necessary for attainment of the applicable ozone NAAQS, and is proposing to approve it as a revision to the Ohio SIP.

E. What Are the Relevant Energy Policy Act Requirements?

The Energy Policy Act of 2005 (EPAct) amends the CAA by requiring EPA, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all SIPs under section 211(c)(4)(C), as of September 1, 2004, and to publish a list that identifies these fuels, the States and Petroleum Administration for Defense Districts (PADD) in which they are used. CAA section 211(c)(4)(C)(v)(II). It also places three additional restrictions on EPA's authority to waive preemption by approving a State fuel program into the SIP.

These restrictions are as follows:

- First, EPA may not approve a State fuel program into the SIP if it would cause an increase in the total number of fuel types approved into SIPs as of September 1, 2004.
- Second, in cases where EPA approval of a fuel would increase the total number of fuel types on the list but not above the number approved as of September 1, 2004, because the total number of fuel types in SIPs is below the number of fuel types as of September 1, 2004, we are required to make a finding after consultation with DOE, that the new fuel will not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas.
- Third, with the exception of 7.0 psi RVP, EPA may not approve a state fuel into a SIP unless that fuel type is already approved in at least one SIP in the applicable PADD. CAA Section 211(c)(4)(C)(v)(I), (IV) and (V).

On December 28, 2006, EPA published the final notice containing the final interpretation, which was a fuel type interpretation, of the EPAct provisions (See 71 FR 78192). We also determined and published a list of the total number of fuels approved into all SIPs, under section 211(c)(4)(C) as of September 1, 2004.

F. How Has the State Met the Relevant Energy Policy Act Requirements?

Any approval of a 7.8 psi RVP program would be subject to the EPAct restrictions, described earlier above. More specifically, any approval of a 7.8 psi RVP program must not cause an increase in the total number of fuel types approved into all SIPs as of

September 1, 2004. Under our final interpretation, Ohio's 7.8 psi RVP requirement for the Cincinnati and Dayton areas is not a ''new fuel type.'' EPA's approval of Ohio's 7.8 psi RVP will not increase the total number of fuels approved into all SIPs, as of September 1, 2004, because 7.8 psi RVP is on the list of fuels types. Further, because the total number of fuels approved into all SIPs at this time is not below the number of fuels on the final list of fuels, which we published on December 28, 2006 (71 FR 78192), we do not believe that we need to make a finding on the effect of a 7.8 psi RVP fuel requirement in Cincinnati and Dayton on fuel supply and distribution in either Cincinnati/Dayton or the contiguous areas. We note, however, that Ohio has delayed the effectiveness of the 7.8 psi RVP fuel requirements until twelve months following the EPA approval of its request for a fuel waiver in order to ensure that there is sufficient compliance time for the regulated community. Finally, because the 7.8 psi RVP fuel type is already approved in at least one SIP (Indiana (61 FR 4895, (February 9, 1996)) in the PADD where Ohio is located, EPA has determined that the Agency is not restricted from approving the 7.8 psi fuel program into the Ohio SIP.

In today's action, we are proposing approval of Ohio's 7.8 psi RVP program as consistent with the provisions of EPAct.

G. Why Is EPA Taking This Action?

EPA is proposing to approve a SIP revision at the request of the OEPA. To ensure that it secures the needed approval under section 211(c)(4)(C) of the CAA, Ohio submitted this action for EPA approval to make it part of the SIP.

H. What Other Relevant Materials Has the State Submitted?

On May 9, 2006, OEPA submitted several VOC rules for approval into the SIP and EPA published a proposed approval of these rules on December 6, 2006 (71 FR 70699). The rules include a provision requiring the use of lower emitting solvents in cold cleaner degreasers, the use of more efficient auto refinishing painting application techniques and a rule requiring the use of lower emitting portable fuel containers all which are discussed in this notice. In addition, EPA recently received a redesignation request from OEPA for the Dayton 8-hour ozone nonattainment area. EPA is currently reviewing the submittal and the implication of any of these additional materials on the approval of the fuel waiver request.

III. Proposed Action

EPA is proposing to approve a SIP revision submitted by the State of Ohio on February 14, 2006 and October 6, 2006, establishing a 7.8 psi RVP fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas which include Montgomery, Miami, Greene, Clark, Hamilton, Butler, Warren and Clermont counties. EPA is proposing to approve Ohio's fuel requirements into the SIP because EPA has found that the requirements are necessary for the Cincinnati and Dayton areas to achieve the NAAQS for ozone.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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 proposes to approve 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 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 proposes approval of a state rule implementing a Federal Standard.

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 regulatory 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program

submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 22, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–5809 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0859; FRL–8293–4]

RIN 2060–AN85

Risk and Technology Review, Phase II, Group 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM asks for public comment on hazardous air pollutant emissions and other model input data that EPA intends to use to assess residual risk from selected industrial major source categories, as required by the Clean Air Act. Specifically, the data are comprised of hazardous air pollutant emission estimates and emission release parameters for 22 industrial source categories subject to 12 national emission standards for hazardous air pollutants for hazardous air pollutants with compliance dates of 2002 and earlier. The source of this information is the February 2006 version of the 2002 National Emissions Inventory, updated with some facility-specific data collected by EPA. We are seeking comment on the emissions and source data found at the Risk and Technology Review Web site and we are providing the opportunity for the public to submit technical corrections and updates. Following review of comments received, we will update the data, as appropriate, and assess risk for these source categories. We will use these risk estimates and our evaluation of the availability, cost, and feasibility of emissions reduction options to determine the ample margin of safety for residual risk and to fulfill our obligations to conduct a technology review. We currently anticipate using the results of these risk estimates along with review of control technology as the basis for our decisions on whether to propose additional standards to address residual risk for each source category. There will be opportunity for oral and written comment on any additional standards when we publish our Notice of Proposed Rulemaking (NPRM). We anticipate proposing the results of this risk and technology review for these 22 source categories by fall 2007.

DATES: Comments must be received on or before May 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0859 by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), Docket ID No. EPA–HQ–OAR–2006–0859, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by Courier, deliver comments to: Air and Radiation Docket (6102T), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0859. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For general information about this ANPRM, contact Ms. Paula Hirtz, Office and Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–2618; *fax number:* (919) 541–0246; and *e-mail address: hirtz.paula@epa.gov.*

For information specific to the National Emissions Inventory (NEI), contact Ms. Anne Pope, Air Quality and Assessment Division (Office and Air Quality Planning and Standards), Mail Code C339–02, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–5373; *fax number:* (919) 541–0684; and *e-mail address: pope.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially affected by this action include facilities containing any one or more of the 22 major source categories subject to the 12 national emission standards for hazardous air pollutants (NESHAP) (or commonly referred to maximum achievable control technology (MACT) standards) listed in Table 1. This action does not affect area sources, as these NESHAP do not apply to area sources. Industries regulated by these MACT are classified by the North American Industry Classification System (NAICS) codes shown in Table 1. In addition, a classification system of MACT codes has been developed and is used in the 2002 NEI to identify processes included in each MACT source category. The MACT codes for the 22 source categories addressed in this notice are also displayed in Table 1.

TABLE 1.—MACT STANDARDS, SOURCE CATEGORIES, AND CORRESPONDING NAICS AND MACT CODES ADDRESSED BY THIS ANPRM

MACT standard/source category name	NAICS codes	MACT code
Mineral Wool Production	327993	409
Aerospace Manufacturing and Rework Facilities	336411	0701
Marine Tank Vessel Loading Operations	4883	0603
Natural Gas Transmission and Storage	486210	0504
Oil and Natural Gas Production	211	0501
Petroleum Refineries	32411	0503
Pharmaceuticals Production	3254	1201
Group I Polymers and Resins:		
Epichlorohydrin Elastomers Production	325212	1311
Hypalon(™) Production	325212	1315
Nitrile Butadiene Rubber Production	325212	1321
Polybutadiene Rubber Production	325212	1325
Styrene-Butadiene Rubber and Latex Production	325212	1339
Group IV Polymers and Resins:		
Acrylic-Butadiene-Styrene Production	325211	1302
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production	325211	1317
Methyl Methacrylate-Butadiene-Styrene Production	325211	1318
Nitrile Resins Production	325211	1342
Polyethylene Terephthalate Production	325211	1328
Polystyrene Production	325211	1331
Styrene-Acrylonitrile Production	325211	1338
Primary Aluminum Reduction Plants	331312	0201
Printing and Publishing Industry	32311	0714
Shipbuilding and Ship Repair Operations	336611	0715

Submitting Comments/CBI. When submitting comments, remember to identify this ANPRM by docket number and other identifying information (subject heading, **Federal Register** date, and page number). Also, make sure to submit your comments by the comment period deadline identified. As described further in section VII of this ANPRM, specific data change suggestions need to be accompanied by supporting documentation that includes a description of any assumptions used and any technical information and/or data that you used.

Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Instead, send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0859. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to Mr. Morales, 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. If you submit a CD–ROM or disc that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated NESHAP at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

As discussed in more detail in section VI of this ANPRM, additional information is available on the Risk and Technology Review Phase II Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that will be used as model inputs.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. What approach is EPA taking for the Risk and Technology Review?
A. What is the approach we are taking to address residual risk for the Group 2 source categories?
B. What data were compiled and reviewed?
C. What are the steps planned before proposing NESHAP to address residual risk?
D. How will we develop proposed NESHAP to address residual risk?
E. When will the NESHAP be proposed and promulgated?
III. What is the purpose of this ANPRM?
IV. What data are in the ANPRM data sets for each source category?
V. What are we specifically seeking comment on?
VI. How may I access the data for a specific source category?
VII. How do I submit suggested data corrections?
VIII. What additional steps are expected after EPA reviews the comments received?

I. Background

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), section 112(d) of the CAA calls for promulgation of technology-based emission standards for those sources. For ''major sources'' that emit or have the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAP, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts). These technology based standards are commonly referred to as MACT standards. Between 1993 and 2004, EPA published 96 MACT standards (or NESHAP) covering 174 source categories. In this first stage, the focus was on ensuring reductions through available technologies. CAA Section 112(d)(6) requires EPA to review these emission standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years.

The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity of emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

Section 112(f)(2) of the CAA then directs EPA to assess the risk remaining (residual risk) after the application of the MACT standards and promulgate more stringent standards for a category or subcategory of sources subject to MACT standards if promulgation of such standards is necessary to protect public health with an ample margin of safety or to prevent (taking into consideration various factors) adverse environmental effects. The standards to be promulgated under this subsection must ''provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the CAA Amendments of 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental impact.'' Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the ''National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants'' (Benzene NESHAP) (54 FR 38044, September 14, 1989).

To date, EPA has conducted CAA 112(d)(6) technology reviews and promulgated residual risk standards for eight (Halogenated Solvents will be promulgated in April 2007) individual NESHAP and their associated source categories. In an effort to streamline this process for the remaining source categories, EPA plans to address residual risk and perform a technology review for several source categories in one combined effort. While the standard review and development process will be streamlined, each source category will be assessed independently and decisions on the level of any standards will be made individually for each source category. The first set of MACT source categories for which this streamlined process will be undertaken includes the 50 source categories listed in Table 2, all of which have MACT compliance dates of 2002 and earlier. (Except for the Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills source category, which has a compliance date of January 2004, these facilities are believed to be in compliance with MACT as of 2002, so the NEI reflects their post-MACT compliance emissions.) This action is referred to as Phase II of the Risk and Technology Review (RTR) process (where the first eight individual NESHAP comprise Phase I). Other MACT standards will be reviewed in the future. While the initial phases of data compilation and EPA internal review processes have been completed for each of the 50 source categories included in RTR Phase II, the source categories have been divided into smaller groups to ease the burden on public commenters and EPA's review of public comments and the rulemaking processes. Table 2 shows the source categories EPA anticipates including in each group of the RTR Phase II.

TABLE 2.—SOURCE CATEGORIES AND CORRESPONDING NAICS AND MACT CODES INCLUDED IN RISK AND TECHNOLOGY REVIEW PHASE II

RTR Phase II group	Source category name	NAICS codes	MACT code
1	Acetal Resins Production	325211	1301
	Hydrogen Fluoride Production	325120	1409
	Group I Polymers and Resins:		
	Butyl Rubber Production	325212	1307
	Ethylene-Propylene Rubber Production	325212	1313
	Polysulfide Rubber Production	325212	1332
	Neoprene Production	325212	1320
	Group II Polymers and Resins:		

TABLE 2.—SOURCE CATEGORIES AND CORRESPONDING NAICS AND MACT CODES INCLUDED IN RISK AND TECHNOLOGY REVIEW PHASE II—Continued

RTR Phase II group	Source category name	NAICS codes	MACT code
	Epoxy Resins Production	325211	1312
	Non-Nylon Polyamides Production	325211	1322
2	Mineral Wool Production	327993	409
	Aerospace Manufacturing and Rework	336411	701
	Marine Tank Vessel Loading	4883	603
	Natural Gas Transmission & Storage	486210	504
	Oil and Natural Gas Production	211	501
	Petroleum Refineries	32411	503
	Pharmaceuticals Production	3254	1201
	Group I Polymers and Resins:		
	Epichlorohydrin Elastomers Production	325212	1311
	Hypalon(™) Production	325212	1315
	Nitrile Butadiene Rubber Production	325212	1321
	Polybutadiene Rubber Production	325212	1325
	Styrene-Butadiene Rubber and Latex Production	325212	1339
	Group IV Polymers and Resins:		
	Acrylic-Butadiene-Styrene Production	325211	1302
2	Group IV Polymers and Resins:		
	Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production	325211	1317
	Methyl Methacrylate-Butadiene-Styrene Production	325211	1318
	Nitrile Resins Production	325211	1342
	Polyethylene Terephthalate Production	325211	1328
	Polystyrene Production	325211	1331
	Styrene-Acrylonitrile Production	325211	1338
	Primary Aluminum Reduction Plants	331312	201
	Printing and Publishing Industry	32311	714
	Shipbuilding and Ship Repair	336611	715
Other	Acrylic/Modacrylic Fibers	325222	1001
	Chromium Electroplating:		
	Chromic Acid Anodizing	332813	1607
	Decorative Chromium Electroplating	332813	1610
	Hard Chromium Electroplating	332813	1615
	Ferroalloys Production	331112	304
	Flexible Polyurethane Foam	326150	1314
Other	Kraft, Sulfite, Semi-chemical, Soda Pulping Processes and Mechanical, Secondary Fiber, and Non-wood Pulping Processes and Papermaking Systems:		
	Pulp and Paper Production	3221	1626–1
	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills:		
	Pulp and Paper Production	3221	1626–2
	Off-site Waste and Recovery	562	806
	Phosphate Fertilizer Production	325312	1410
	Phosphoric Acid Manufacturing	325312	1411
	Polycarbonates Production	325199	1326
	Polyether Polyols Production	325199	1625
	Portland Cement Manufacturing	3273	410
	Primary Lead Smelting	331419	204
	Publicly Owned Treatment Works	221320	803
	Secondary Aluminum Production	331314	202
	Secondary Lead Smelting	331492	205
	Steel Pickling-HCl Process	331111	310
	Wood Furniture Manufacturing	337122	716
	Wool Fiberglass Manufacturing	327993	412

This ANPRM addresses only the 22 source categories included in Group 2. As initial analyses for each source category included in Group 1 of the RTR Phase II indicate that estimated health risks to the individual most exposed to emissions from a facility in the source category meet levels the Agency considers to be without appreciable health risk and it is improbable that these source categories emit pollutants that would cause adverse environmental effects, we plan to publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** for the 8 source categories in Group 1 without previously issuing an ANPRM. The remaining source categories were split into two groups. Group 2 is generally comprised of source categories with earlier deadlines, fewer multipathway concerns, and categories that the Agency believes will require fewer resources to complete. The source categories in the other group generally have later deadlines and more multipathway concerns. Additional notices will be published addressing the other source categories in the future.

II. What approach is EPA taking for the Risk and Technology Review?

A. What is the approach we are taking to address residual risk for the Group 2 source categories?

We plan to follow the same general process in revising NESHAP to address residual risk for each of Group 2 source categories listed in the table above. *This*

general approach includes the following primary steps:

1. Compile and review (and update with facility-specific data collected by EPA in some cases) readily available source category emissions data from the 2002 NEI.
2. For each group of source categories, conduct preliminary evaluations to identify key HAP and data anomalies.
3. Make emissions and other modeling input data, along with a list of the identified key HAP and data anomalies, available for public comment through an ANPRM.
4. Reconcile and update emissions and other modeling input data, based on comments received, and conduct a risk assessment for each category.
5. Develop and propose CAA section 112(f)(2) residual risk and CAA section 112(d)(6) technology review standard(s) as appropriate.
6. Address comments from the proposal(s) and promulgate CAA section 112(f)(2) residual risk and CAA 112(d)(6) technology standard(s), where necessary.

An independent scientific peer consultation is currently underway to review the approach for assessing residual risk for the source categories included in the RTR Phase II. This peer consultation will be conducted by a panel of EPA's Science Advisory Board, and will focus on: (1) The source of emissions and other modeling data and the approach for refining this data, (2) the analytical approach for quantifying and characterizing human and environmental exposures and risks, and (3) the types of results that will be generated and the format for the characterization of assessment results.

The process outlined above for the 22 source categories included in Group 2 of the RTR Phase II is described in more detail in the following discussion.

B. What data were compiled and reviewed?

In the first step of this process, we used the 2002 NEI Final Version 1 (made publicly available on February 26, 2006) as a starting point and compiled emissions information for each source category and performed an internal engineering review of these data (referred to hereafter as ''initial NEI data''). The primary data attributes evaluated in this review included: (1) Facility representation in each source category (i.e., we ensured that source categories accurately included facilities making the products characteristic of the source categories), and (2) appropriateness of facility emissions, in both the inclusion of the appropriate HAP, and in the magnitude of those HAP emissions. In cases where better data were known to exist for a particular source category, that information was integrated into the data set for that source category. These reviewed and integrated data sets for each source category are referred to hereafter as the ''ANPRM data sets.''

C. What are the steps planned before proposing NESHAP to address residual risk?

In this ANPRM, we are seeking public review and comment on the emissions and other model input data included in the ANPRM data sets for the source categories included in Group 2 of the RTR Phase II. These source categories are listed in Table 1. We will evaluate the comments and data corrections received in response to this ANPRM and update the data for the source categories in Group 2, as appropriate. In accordance with the methodologies described in the Residual Risk Report to Congress, we will then use the revised model input data sets for these source categories (referred to as the notice of proposed rulemaking, or NPRM, data sets) in an analysis of the inhalation risks. The Human Exposure Model (Community and Sector HEM–3 version 1.1.0) will be used to perform this modeling. The HEM–3 model performs three main operations: dispersion modeling, estimation of population exposure, and estimation of human health risks. The dispersion model used by HEM–3 is AERMOD, which is one of EPA's preferred models for assessing pollutant concentrations from industrial facilities.[1] We will also perform a screening assessment of potential adverse environmental effects using these updated data.

We will also evaluate the NPRM data sets for each of the 22 source categories for potential non-inhalation human health risks, specifically through the presence of emissions of any persistent and bioaccumulative (PB) HAP, all of which are listed in Table 3 below.[2] For source categories that also carry a potential for non-inhalation human health risks, in addition to analyses to estimate risks from inhalation of emissions, we will also estimate risks using refined models capable of addressing multi-pathway exposures (i.e., exposures due to ingestion or dermal exposures). The models selected for this exercise (primarily, we will use the EPA's Total Risk Integrated Modeling system, or TRIM, a refined multi-pathway pollutant fate and transport model) will also be used to produce estimates of pollutant concentrations in the surrounding environment, which will be used in the quantitative assessment of environmental risks from these chemicals. The 22 source categories are not expected to have multi-pathway issues.

TABLE 3.—PERSISTENT AND BIOACCUMULATIVE HAZARDOUS AIR POLLUTANTS (PB HAP)

Cadmium compounds	Chlordane	Chlorinated dibenzodioxins and furans
DDE	Heptachlor	Hexachlorocyclohexane (all isomers)
Hexachlorobenzene	Lead compounds	Mercury compounds
Methoxychlor	Polychlorinated biphenyls.	Polycyclic Organic Matter (POM)
Toxaphene	Trifluralin	

D. How will we develop proposed NESHAP to address residual risk?

We will provide a more detailed discussion of the residual risk methodology in the Group 2 NPRM. Therefore, after the risk assessments for Group 2 are complete, the results will be examined to determine whether any source category meets certain criteria where the Agency considers the risk to not be a problem (''low risk''). The ''low risk'' criteria we intend to consider include: Lifetime cancer risk to the individual most exposed is less than 1-in-1 million, chronic non-cancer risk to

[1] Environmental Protection Agency. Revision to the Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions (70 FR 68218, November 9, 2005).

[2] Environmental Protection Agency. Air Toxics Risk Assessment Reference Library, Volume I. EPA–453K–04–001A. *http://www.epa.gov/ttn/fera/risk_atra_vol1.html.*

the individual most exposed is less than a target-organ-specific hazard index of 1, air concentrations estimated for acute exposures scenarios are less than health-protective reference levels, and there is no potential for significant and widespread adverse environmental effect.

For Group 2 source categories in which all facilities meet these ''low risk'' criteria, EPA will not propose further regulation under CAA section 112(f). For source categories that are not determined to be low risk, a two-step standard development process will be applied, consistent with CAA section 112(f) and with our previously articulated approach for developing NESHAP pursuant to CAA section 112(f). This approach was described in the final NESHAP addressing residual risk for coke ovens (58 FR 57898, October 27, 1993).

In the first step of this approach, modeled source category risks will be evaluated to determine if they are ''acceptable.'' The term ''acceptable,'' in reference to residual risks is not specifically defined in the CAA, but CAA section 112(f)(2) refers positively to the interpretation of this term in the Benzene NESHAP (54 FR 38044, September 14, 1989).

The preamble to the Benzene NESHAP (54 FR 38044, September 14, 1989) stated that a lifetime maximum individual excess cancer risk of approximately 100-in-1 million ''should ordinarily be the upper-end of the range of acceptability.'' However, this is not a rigid line of acceptability, and other factors will be considered, such as the number of people exposed at various risk levels, the overall incidence of cancer and other serious health effects, assumptions and uncertainties associated with the risk analysis (including the 70 year exposure assumption), and the weight of evidence for human health effects.

In the second step of this standard development process, we will develop risk-reduction regulatory alternatives and decide upon the level of the standard for each source category, considering the requirements necessary to provide an ample margin of safety to protect human health, as required by CAA section 112(f)(2). To develop the regulatory alternatives, we will conduct various analyses, including an assessment of the impacts of each regulatory alternative. The impacts will include HAP emission reductions, other environmental impacts, costs, economics, small business impacts, reduction in maximum risks to individuals most exposed, reductions in chronic and acute risks to populations at various risk levels, and reductions in cancer incidence. We will assess these alternatives, decide upon the level of the standard, and publish a NPRM in the **Federal Register** to propose any regulatory changes for the individual standards codified in 40 CFR part 63 for each source category.

As we undertake these rulemaking proposals, we will also consider developments in pollution control in each source category and the costs of potentially stricter standards reflecting those developments, to fulfill the requirements of CAA section 112(d)(6). Where there have been developments in practices, processes, and control technologies, we will consider relevant factors, such as costs, potential emissions reductions, and health and environmental risk in a determination of what, if any, further controls are necessary. Where appropriate, we will develop regulatory alternatives, assess the impacts of those alternatives, and decide upon the level of the standard(s). We plan to propose any CAA section 112(d)(6) regulatory changes for the individual standards codified in 40 CFR part 63 for each source category in the same **Federal Register** notice proposing action addressing residual risk.

E. When will the NESHAP be proposed and promulgated?

Our current goal is to propose the decisions resulting from both CAA section 112(f) (residual risk) and CAA section 112(d)(6) (technology review) efforts, including the proposal of any standards for each of the 21 source categories in Group 2, in the Fall of 2007. Proposal of any standards for the petroleum refineries source category will occur by the court-ordered deadline of August 22, 2007. In addition to proposing any new residual risk or technology-based standards, we will announce any decisions not to promulgate residual risk standards for ''low risk'' source categories or source categories for which the current standards protect public health with an ample margin of safety and any decisions not to promulgate additional technology-based standards.

After the close of the comment period on the proposed standard(s), we will review and perform any analyses and data gathering necessary to address the comments, prepare responses, and make changes to the proposed standards, as necessary. We anticipate the final standards will be published in the **Federal Register** in the summer of 2008.

III. What is the purpose of this ANPRM?

The primary purpose of today's ANPRM is to request public comments on the emissions and other model input data included in the ANPRM data sets for the 22 source categories included in Group 2 of the RTR Phase II. These data are provided in an updatable form on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* We provide detail in section VII below on how to submit updates and corrections to this information. Following review of comments received, we will update the data as appropriate, and model to generate estimates of residual risk that we will use as the basis for our proposed decisions on whether to develop standards to address residual risk for each source category.

Section V lists the general items for which we are seeking comment for all source categories. In addition, we note information unique to each source category for which we are requesting technical corrections or updates in the source category specific sections within section IV of this ANPRM. We note that emissions data cannot be withheld from disclosure as CBI pursuant to section 1905 of title 18 of the United States Code. EPA's policy regarding the categories of information that it considers to be ''emissions data'' is set forth in a **Federal Register** notice dated February 14, 1991 (56 FR 7042). A copy of that notice has been placed in the docket.

IV. What data are in the ANPRM data sets for each source category?

As mentioned in Section II of this ANPRM, the 2002 NEI is the primary data source used in creating the ANPRM data sets for each source category. The data extracted from the NEI for inclusion in the ANPRM data sets included general facility information, such as company name, plant name, and facility identification codes; emissions data, including speciated HAP emissions data; emissions release characteristics, including stack height, stack diameter, and the emissions stream exit temperature and velocity; and location information, including the latitude/longitude coordinates of emissions release locations. For more information on the 2002 NEI, please visit our 2002 NEI Web page at *http://www.epa.gov/ttn/chief/net/2002inventory.html.*

For the most part, the emissions values in the ANPRM data set represent actual emission levels. Where actual emissions data is not already included,

we request that commenters provide such data.

Due to the high uncertainty of the dioxin/furan emissions information submitted during the inventory development process, dioxin/furan emissions were not included in the 2002 NEI, and no emissions of these compounds are included in the ANPRM data sets. As we update the ANPRM data set, we will include dioxin/furan emissions, based on the best information available to EPA at that time. These data may include information EPA has gathered on dioxin and dioxin-like compounds. The EPA National Center for Environmental Assessment Web site, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=159286*, contains links to these data.

In creating the ANPRM data sets for each source category, we started with the February 2006 version of the 2002 NEI. We first conducted a detailed review of the facilities that were included in the NEI and added or removed facilities to make the data as representative of the overall source category as possible. We then reviewed emissions, release characteristics, and other model input data.

We began by retrieving all records in the 2002 NEI based solely on MACT source category designations, which are fields in the NEI that identify the MACT source category that applies to each emission point. This MACT source category is assigned by a variety of methods. In some cases, the State or local agency that provided the data to EPA identified the MACT category. Since State and local agencies are aware of the regulations that apply to facilities, we have high confidence in MACT category designations provided by a State or local agency. In other cases, EPA staff responsible for developing the MACT standards provided input to populate the MACT source category code fields. As these individuals have knowledge of the source category for which they are accessing and using the NEI data, the confidence in these designations is also high. Most of the MACT source category code designations, however, are assigned based on Standard Industrial Classification (SIC), NAICS, or Source Classification Code (SCC) defaults. There is often considerable uncertainty associated with these designations.

One of the first things we reviewed in the NEI data was the list of facilities included for each source category. For some source categories, we are reasonably confident that we know the names of the facilities and their exact locations. In these cases, we compared the ''known'' lists of facilities to the facilities in the NEI. We removed the MACT source category designation for facilities not on the known list. If facilities on the known lists were not in the data for the source categories, we searched the NEI for these facilities. Quite often, they were in the 2002 NEI, but had different, and presumably incorrect, MACT source category designations. These facilities were added to the data set for the category and the MACT source category codes were re-designated accordingly.

For large facilities with multiple processes that represent multiple MACT source categories, it was not always straightforward to separate the processes by source category. In these cases, we used a variety of approaches to separate the processes and emission points into source categories. Examples of the criteria used to separate processes and emissions into source categories include SCC, SIC codes, and pollutants emitted. Situations where such source category separation decisions were made are highlighted in the source-category discussions later in this section and detailed in the files available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* We are asking specifically for comment on how we separated processes and emission points by source category at these large integrated facilities.

For categories with large numbers of facilities for which we do not have complete lists of known facilities, we conducted more general evaluations of the facilities in the data sets. These evaluations included examining the company names, SIC, NAICS, and SCC, and adding or removing facilities based on these criteria.

We will be evaluating residual risk for all facilities and emission sources that are in the 22 source categories included in Group 2 of the RTR Phase II. In some instances, the ANPRM data sets may include emission points that are part of the source category but are not subject to the MACT standard for that source category. Emissions from these sources will be considered in our future regulatory decisions. In addition, the ANPRM data sets, for most source categories, include all major and area sources (facilities) in the 2002 NEI that have processes related to the specific source category.

After finalizing the facility lists for each source category, we conducted a general review of the emissions and other data included in the ANPRM data sets to identify data anomalies that could affect the risk estimates. With a few exceptions, we did not change the data or include additional data. For the following source categories, the 2002 NEI was supplemented with additional data provided by industry to create the ANPRM data sets:

- Petroleum Refineries
- Shipbuilding and Ship Repair
- Source categories regulated by the Group I Polymers and Resins MACT:
  - Epichlorohydrin Elastomers Production
  - Hypalon™ Production
  - Nitrile Butadiene Rubber Production
  - Polybutadiene Rubber Production
  - Styrene-Butadiene Rubber and Latex Production

The addition of these data, as well as other data changes made, are described in the source-category specific sections below. We note that because these changes are included in the ANPRM data sets, these data sets do not exactly match the February 2006 version of the 2002 NEI data available on our NEI Web site—*http://www.epa.gov/ttn/chief/net/2002inventory.html.* When comments are received via this ANPRM and incorporated into the source category-specific ANPRM data sets, these revisions will then also be incorporated into the 2002 NEI and made publicly available through the NEI Web site in Final Version 2.1.

Following are sections discussing the data for individual source categories. These discussions provide an overview of the source category, a brief summary of the ANPRM data sets, and a mention of the types of major anomalies associated with the data. Summary reports for each of the source categories, which contain considerable detail on the information summarized below, including the carcinogenic HAP and HAP with adverse health effects other than cancer, are available on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* We especially encourage you to review the specific anomalies raised in these reports and to provide data to help reduce these anomalies.

1. Mineral Wool Production

The mineral wool production source category includes facilities that produce mineral wool, which is a fibrous, glassy substance made from natural rock (such as basalt), blast furnace slag, or other similar materials and consisting of silicate fibers. In the mineral wool manufacturing process, rock and/or blast furnace slag and other raw materials (e.g., gravel) are melted in a furnace (cupola) using coke as fuel. The molten material is then formed into fiber. Mineral wool is manufactured as either a ''bonded'' product that

incorporates a binder to increase structural rigidity or a less rigid ''nonbonded'' product. Emission sources from mineral wool manufacturing facilities include the cupola furnace where the mineral charge is melted; a blow chamber, in which air or a binder is drawn over the fibers, forming them into a screen; a curing oven that bonds the fibers (for bonded products); and a cooling oven. The primary HAP expected to be emitted during the mineral wool manufacturing process are metals, including antimony, arsenic, beryllium, cadmium, chromium, manganese, nickel, lead, and selenium that are emitted from the cupola, and gaseous HAP, including formaldehyde, carbonyl sulfide, and phenol, that result from the vaporization of the binder.

The ANPRM data set for this source category includes information for 12 facilities, 11 of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the mineral wool source category, this data set represents between 75 and 90 percent of the industry. The HAP emitted in largest quantities from these facilities is carbonyl sulfide, which accounts for over 84 percent of the total HAP emissions by mass from the data set. Formaldehyde, triethylamine, and phenol are also emitted in large quantities. Several PB HAP are reported in the data set for the mineral wool manufacturing source category, including lead, cadmium, and mercury compounds.

The major anomalies associated with the data set for this source category include the HAP emitted and the speciation of chromium and mercury emissions. Some HAP expected (e.g., lead, manganese, cadmium, chromium, nickel, etc.) are not included for all the facilities in the data set, and some that are not expected (e.g., benzene and triethylamine) are reported from a few facilities.

2. Aerospace Manufacturing and Rework Facilities

The aerospace manufacturing and rework source category includes all facilities that manufacture aerospace vehicles and/or vehicle components and all facilities that rework or repair these items. An aerospace vehicle or component is any fabricated, processed, or assembled set of parts or complete unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles. Organic and inorganic HAP emissions in aerospace facilities originate from cleaning, primer application, topcoat application, paint stripping, chemical milling maskant application, and waste handling and storage. The HAP expected to be emitted by aerospace facilities include chromium, cadmium, methylene chloride, toluene, xylene, ethylene glycol, and glycol ethers. For emissions reported generically as ''chromium'' or ''chromium and compounds,'' emissions are speciated for this source category as 75 percent ''chromium (III) compounds'' and 25 percent ''chromium (VI) compounds.'' This speciation is based on source category-specific information provided by the aerospace industry. (Typically, a 66 percent ''chromium (III) compounds'' and 34 percent ''chromium (VI) compounds'' is used as a default speciation profile based on the approach adopted by the 1996 National-Scale Air Toxics Assessment, or NATA.) We encourage commenters to review this assumption and provide site-specific chromium (VI) and chromium (III) data where possible.

The ANPRM data set for the Aerospace Manufacturing and Rework source category includes information for 301 facilities, 169 of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the aerospace source category, the ANPRM data set includes data for about 10 percent of the industry. Methyl chloroform, tetrachloroethylene, toluene, trichloroethylene, and methylene chloride account for approximately 80 percent of the mass of HAP emitted across the 301 facilities in the ANPRM dataset.

The major anomalies associated with the data set for this source category include the number of facilities in the source category, the HAP emitted, and the speciation of chromium. Some HAP expected to be reported (chromium, nickel, and hexamethylene diisocyanate) are not included for all the facilities in the data set.

3. Marine Tank Vessel Loading Operations

Marine tank vessel loading operations are facilities that load and unload liquid commodities in bulk, such as crude oil, gasoline and other fuels, and some chemicals and solvent mixtures. The cargo is pumped from the terminal's large, above-ground storage tanks through a network of pipes and into a storage compartment (tank) on the vessel. Most marine tank vessel loading operations are associated with petroleum refineries, synthetic organic chemical manufacturers, or are independent terminals. The major HAP emission points for marine vessel loading operations include open tank hatches and overhead vent systems. Other possible emission points are hatch covers or domes, pressure-vacuum relief valves, seals, and vents. Emissions may also occur during ballasting (i.e., the process of drawing ballast as water into a cargo hold). The primary HAP expected to be emitted from marine vessel loading operations depend on the material being loaded, but are generally expected to be benzene, hexane, toluene, xylene compounds, ethyl benzene, and cumene.

The ANPRM data set for the marine tank vessel loading operations source category includes information for 126 facilities, all of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in this source category, the ANPRM data set includes data for more than were expected to be subject to the MACT (which was estimated to be 40 at time of the MACT promulgation) and less than the estimated number of existing facilities based on Army Corps of Engineers estimates (700). In the ANPRM data set, the HAP emitted in largest quantities from these 126 sources are hexane, methanol, toluene, xylene compounds, and benzene, which collectively accounts for nearly 75 percent of the total HAP emitted.

The major anomalies associated with the data set for this source category include the number of facilities in the source category and the emission release parameters (of which nearly all are NEI default values).

4. Natural Gas Transmission and Storage

The natural gas transmission and storage source category comprises the pipelines, facilities, and equipment used to transport and store natural gas products (hydrocarbon liquids and gases). Pipeline transport of natural gas products is covered by this category to either the point of custody transfer for the oil and natural gas production source category or the point of delivery to the local distribution company or final end user of the natural gas if no local distribution company is present. Emissions of HAP from the natural gas transmission and storage category come from glycol dehydration unit reboiler vents, other process vents, storage vessels with flash emissions, pipeline pigging and storage of pipeline pigging wastes, combustion sources, and equipment leaks. The major HAP expected to be emitted by the natural gas transmission and storage source category are hexane, toluene, benzene, mixed xylenes, formaldehyde, and glycol ethers.

Our previous estimates identified seven natural gas transmission and storage facilities that were major sources. The ANPRM data set for the natural gas transmission and storage source category includes information for 123 facilities, 78 of which are classified as major sources in the NEI. In the ANPRM data set, the HAP emitted in largest quantities from natural gas transmission and storage facilities are hexane, toluene, benzene, and mixed xylenes and these emissions collectively account for over 75 percent of the total HAP emissions from this source category.

One major anomaly associated with the data set for this source category is the number of facilities identified in the ANPRM data set compared to the number of facilities previously identified for this source category (i.e., there appear to be more facilities identified as natural gas transmission and storage facilities in the ANPRM data set than previously identified).

5. Oil and Natural Gas Production

The Oil and Natural Gas Production source category includes facilities involved in the recovery and treatment of hydrocarbon liquids and gases from oil and natural gas production wells. Components of these facilities include glycol dehydration units, condensate tank batteries, and other tanks and equipment present at natural gas processing plants. The primary HAP emissions from oil and natural gas production facilities occur via the glycol dehydration reboiler vents, other process vents, storage vessels, and equipment leaks. The major HAP expected to be emitted by the oil and natural gas production source category are xylenes, toluene, hexane, and ethyl benzene.

The ANPRM data set for the oil and natural gas production source category includes information for 2,824 facilities, of which 909 facilities are classified as major sources in the NEI. Our previous estimates identified 440 major sources and 2,200 area sources. In the ANPRM data set, the HAP emitted in the greatest amounts are carbonyl sulfide, hexane, toluene, benzene, and xylenes formaldehyde, ethyl benzene, ethylene glycol, and methanol. These HAP collectively account for over 99 percent of the total HAP emissions for this source category. There are twelve PB HAP reported in the data set for the Oil and Natural Gas Production source category, including polycyclic aromatic hydrocarbons (PAH), lead, dibenzofuran, and cadmium.

For reported emissions of POM chemicals, emissions are grouped into one of seven POM categories—POM 71002 (16–PAH, PAH total, POM); POM 72002 (2–Chloronaphthalene, 2–Methylnaphthalene, Acenaphthene, Acenaphthylene, Anthracene, Benzo(c)phenanthrene, Benzo[e]Pyrene, Benzo[g,h,i,]Perylene, Fluoranthene, Fluorene, Perylene, Phenanthrene, Pyrene); POM 73002 (7,12–Dimethylbenz[a]Anthracene); POM 74002 (3–Methylcholanthrene); POM 75002 (5–Methylchrysene, Benzo[a]Pyrene, Dibenzo[a,h]Anthracene); POM 76002 (B[j]Fluoranthen, Benz[a]Anthracene, Benzo[b]Fluoranthene, Benzo[k]Fluoranthene, Indeno[1,2,3-c,d]Pyrene); and POM 77002 (Chrysene). We encourage commenters to provide data on the individual chemical(s) that make up the POM.

The major anomalies associated with the data set for this source category include the number of facilities in the source category, the specific HAP emitted by individual facilities, and default plant coordinates. The ANPRM data set contains over 2,800 facilities and this number is more than expected. The ANPRM data set also contains emissions of some HAP that are expected to be emitted from all facilities in the category (e.g., xylenes, hexane, toluene, and ethyl benzene), but are only emitted from a small percentage of facilities. Conversely, the HAP with the largest quantity of emissions in the ANPRM data set, carbonyl sulfide, is not expected to be emitted from facilities in this source category. In addition, a significant percentage (40 percent) of the coordinates in the ANPRM data set are default coordinates.

6. Petroleum Refineries

Petroleum refineries are facilities engaged in refining and producing products made from crude oil or unfinished petroleum derivatives. EPA listed two separate Petroleum Refinery source categories, both of which include any facility engaged in producing gasoline, naphtha, kerosene, jet fuels, distillate fuel oils, residual fuel oils, lubricants, or other products from crude oil or unfinished petroleum derivatives. The Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units source category includes the following process units: catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units (MACT II). The second source category, Petroleum Refineries—Other Sources Not Distinctly Listed, includes the process units not listed in the first category including, but not limited to, thermal cracking, vacuum distillation, crude distillation, hydrotreating, hydrorefining, isomerization, polymerization, lube oil processing, and hydrogen production (MACT I).

Because the MACT standard for the ''Other Sources Not Distinctly Listed'' source category (40 CFR part 63, subpart UU) was promulgated first (60 FR 43244, August 18, 1995), it is commonly referred to as Petroleum Refineries MACT I. Only the units in the ''Other Sources Not Distinctly Listed'' category, and regulated by the MACT 1 standards, are being addressed in RTR Phase II. These units include emissions sources classified under SIC 2911 located at petroleum refineries, including: petroleum refinery process units, storage vessels, transfer racks, wastewater streams, and equipment leaks. The units and emissions associated with catalytic cracking, catalytic reforming, and sulfur plants, which are all regulated by MACT 2 standards, will be investigated in future RTR efforts.

The specific HAP emitted by petroleum refineries varies by facility and process operations but can include a variety of organic and inorganic compounds and metals. Emissions originate from various process vents, storage vessels, wastewater streams, loading racks, marine tank vessel loading operations, and equipment leaks associated with refining facilities. Process vents, wastewater streams, and storage vessels generally emit organic HAP. The primary HAP expected to be emitted from the MACT 1 petroleum refining sources include benzene, toluene, and ethyl benzene, but can also include acetaldehyde, formaldehyde, hexane, phenol, xylene, carbonyl sulfide, carbon disulfide, hydrogen chloride, chlorine and other HAP.

The ANPRM dataset for this source category contains 175 refineries, of which 124 are classified as major sources. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date benzene emissions data for 23 refineries. The industry and EPA consider these data to be the most accurate benzene emissions data available for petroleum refineries. For these 23 refineries, EPA replaced all benzene emissions data in the NEI with these updated industry data. The emissions of other HAP that were in the NEI for these 23 refineries were not removed. For the purpose of these analyses, the ANPRM data set for these 23 facilities was kept separate from the ANPRM data set for the remaining 152 refineries.

Organic chemicals account for the majority of the total mass of HAP emitted by petroleum refinery sources, with toluene, hexane, mixed and individual isomers of xylenes, benzene, methanol, methyl tert-butyl ether, and ethyl benzene accounting for about 90 percent of the HAP mass emitted across the both data sets. Of the 152 refineries for which industry did not supply benzene emissions data, benzene emissions were reported for 137 refineries. A range of PB HAP emissions are reported in the ANPRM datasets, including various PAH and several metals (including lead and lead compounds, cadmium and cadmium compounds, mercury and mercury compounds).

For reported emissions of POM chemicals, emissions are grouped into one of seven POM categories. We encourage commenters to provide the individual chemical(s) that make up the POM.

The major anomalies associated with the data sets for this source category include specific HAP emitted by individual facilities, along with release characteristics and coordinates for those refineries for which industry did not provide updated data. The data sets contain emissions of several metal HAP, which are expected to be more likely to be emitted from MACT 2 sources, not MACT 1. Also, it appears that the benzene emissions for the 23 facilities for which the industry supplied new data are significantly higher than the benzene emissions in the NEI for the other refineries.

Nearly all of the emissions release parameters (71 percent of stack height, 96 percent of stack diameter, 97 percent of emissions exit temperature, and 97 percent of emissions exit velocity values) for the refineries for which no new data were provided are default values in the NEI and the ANPRM data set. Finally, a significant percentage (40 percent) of the coordinates in the data set for which new data were not provided are defaulted, some based on county or zip code centroids.

7. Pharmaceutical Manufacturing

The pharmaceutical manufacturing process consists of chemical production operations that produce drugs and medication. These operations include chemical synthesis (deriving a drug's active ingredient) and chemical formulation (producing a drug in its final form). During pharmaceutical manufacturing operations, HAP emissions can occur from breathing and withdrawal losses from chemical storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams. While a wide variety of HAP can be emitted from pharmaceutical manufacturing processes, expected HAP include methylene chloride, methanol, N,N-dimethylformamide, toluene and hydrochloric acid. When the NESHAP for this category was finalized in 1998, EPA estimated that there were approximately 101 pharmaceutical manufacturing operations subject to the MACT regulations.

The ANPRM data set for pharmaceutical manufacturing includes 222 facilities, 107 of which are classified as major sources in the NEI. The HAP emitted in largest quantities from these sources are methanol, methylene chloride, and toluene. Emissions of these three HAP account for over 80 percent of the mass of all HAP emitted across all 222 facilities. PB HAP emissions in the ANPRM data set for the Pharmaceutical Manufacturing source category include lead, mercury, and cadmium compounds as well as a range of PAH.

For reported emissions of POM chemicals, emissions are grouped into of one of seven POM categories. We encourage commenters to provide the individual chemical(s) that make up the POM.

For emissions reported generically as ''chromium'' or ''chromium and compounds,'' emissions are speciated for this source category as 66 percent ''chromium (III) compounds'' and 34 percent ''chromium (VI) compounds.'' We encourage commenters to review this assumption and provide specific chromium (VI) and chromium (III) data where possible.

The major anomalies associated with the data set for this source category are related to the HAP emitted. While methylene chloride, NN-dimethylformamide, toluene, and hydrochloric acid are expected to be emitted by facilities in this source category, these emissions were not reported for many of the facilities. Also, HAP not expected to be emitted from this source category (e.g., ethylene oxide, p-dioxane, naphthalene, ethylene dichloride, arsenic, hydrazine, POM, and chromium (IV) compounds) are reported for eight or fewer facilities.

8. Epichlorohydrin Elastomers Production

Epichlorohydrin elastomers are widely used in the automotive industry. The main epichlorohydrin elastomers are polyepichlorohydrin, epi-ethylene oxide (EO) copolymer, epi-allyl glycidyl ether (AGE) copolymer, and epi-EO–AGE terpolymer. Sources of HAP emissions for the Epichlorohydrin Elastomer source category include raw material storage vessels, front-end process vents, back-end process operations, wastewater operations, and equipment leaks. The majority of the emissions come from equipment leaks. The process ''front-end'' includes pre-polymerization, reaction, stripping, and material recovery operations; and the process ''back-end'' includes all operations after stripping (predominately drying and finishing). The primary HAP emitted during production are epichlorohydrin and toluene.

The ANPRM data set for the Epichlorohydrin source category includes information for one facility, which is classified as a major source in the NEI. Our previous estimate of the number of facilities in the Epichlorohydrin source category was also one, therefore we believe the ANPRM data set includes data for the entire industry. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date emissions and emissions release characteristic data for this facility. The industry and EPA consider these data to be the most accurate emissions and emissions release characteristic data available for the epichlorohydrin elastomers production processes at this facility. EPA replaced all epichlorohydrin elastomers production emissions and emissions release characteristic data in the NEI with the updated industry data for this facility. In the ANPRM data set, toluene is emitted in the greatest quantity and accounts for about 99 percent of the total emissions.

9. Hypalon™ Production

Hypalon™, or chlorosulfonated polyethylene, is a synthetic rubber produced by reacting polyethylene with chloric and sulfur dioxide, transforming the thermoplastic polyethylene into a vulcanized elastomer. The reaction is conducted in a solvent reaction medium containing carbon tetrachloride. Sources of HAP emissions include raw material storage vessels, front-end process vents, back-end process operations, and equipment leaks. The majority of the emissions come from front-end process vents. The process ''front-end'' includes pre-polymerization, reaction, stripping, and material recovery operations; and the process ''back-end'' includes all operations after stripping (predominately drying and finishing). The primary HAP emitted during production are carbon tetrachloride and chloroform.

The ANPRM data set for the Hypalon™ resins source category includes information for one facility, which is classified as a major source in the NEI. Our previous estimate of the number of facilities in the Hypalon™ source category was also one, therefore we believe the ANPRM data set includes data for the entire industry. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date emissions and emissions release characteristic data for this facility. The industry and EPA consider these data to be the most accurate emissions and emissions release characteristic data available for the Hypalon™ production processes at this facility. EPA replaced all Hypalon™ production emissions and emissions release characteristic data in the NEI with the updated industry data for this facility.

In the ANPRM data set, carbon tetrachloride and chloroform are emitted in the greatest amounts and account for nearly all of the emissions.

10. Nitrile Butadiene Rubber Production

Nitrile butadiene rubber is a copolymer of 1,3-butadiene and acrylonitrile, and the Nitrile Butadiene Rubber Production source category includes any facility that polymerizes 1,3-butadiene and acrylonitrile. Depending on its specific composition, nitrile butadiene rubber can be resistant to oil and chemicals, a property that facilitates its use in disposable gloves, hoses, seals, and a variety of automotive applications. The drying and finishing steps that make up the back-end processes are significant sources of HAP emissions. Other sources of HAP emissions include raw material storage vessels, front-end process vents, wastewater operations, and equipment leaks. The primary HAP emitted during production are acrylonitrile, 1,3-butadiene, and styrene.

The ANPRM data set for the Nitrile Butadiene Rubber Production source category includes five facilities, two of which are classified as major sources. Based on our previous estimates of the number of facilities in the source category, the ANPRM data set includes data for the entire industry. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date emissions and emissions release characteristic data for three of these five facilities. The industry and EPA consider these data to be the most accurate emissions and emissions release characteristic data available for the nitrile butadiene rubber production processes at these facilities. For these three facilities, EPA replaced all nitrile butadiene rubber production emissions and emissions release characteristic data in the NEI with these updated industry data.

In the ANPRM data set, styrene, 1,3-butadiene, and acrylonitrile are emitted in the largest quantities, accounting for 42 percent, 21 percent, and 33 percent of the total source category emissions, respectively.

A major anomaly associated with the data set for this source category is that one HAP expected to be reported by each facility (1,3-butadiene) is not included in the data for all the facilities.

11. Polybutadiene Rubber Production

Polybutadiene rubber is a homopolymer of 1,3-butadiene, and the Polybutadiene Rubber Production source category includes any facility that polymerizes 1,3-butadiene. Most of the polybutadiene rubber manufactured in the United States is used in the production of tires in the construction of the tread and sidewalls. Sources of HAP emissions include raw material storage vessels, front-end process vents, back-end process operations, wastewater operations, and equipment leaks. The majority of the emissions come from back-end process operations, which are predominately drying and finishing. The primary HAP emitted during production include hexane, 1,3-butadiene, styrene, and toluene.

The ANPRM data set for the Polybutadiene Rubber Production source category includes information for five facilities, each of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Polybutadiene Rubber Production source category, the ANPRM data set includes data for the entire industry. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date emissions and emissions release characteristic data for each of these five facilities. The industry and EPA consider these data to be the most accurate emissions and emissions release characteristic data available for the polybutadiene rubber production processes at these facilities. For these five facilities, EPA replaced all polybutadiene rubber production emissions and emissions release characteristic data in the NEI with these updated industry data.

In the ANPRM data set, hexane and toluene are emitted in the greatest amounts and account for about 74 and 19 percent of the total emissions, respectively.

12. Styrene-Butadiene Rubber and Latex Production

The Styrene-Butadiene Rubber and Latex Production source category includes any facility that manufactures copolymers consisting of styrene and butadiene monomer units. This source category is divided into three subcategories due to technical process and HAP emission differences: (1) The production of styrene-butadiene rubber by emulsion, (2) the production of styrene-butadiene rubber by solution, and (3) the production of latex. Styrene-butadiene rubber is coagulated and dried, while latex is not. For both styrene-butadiene rubber processes, the monomers used are styrene and butadiene; either process can be conducted as a batch or a continuous process. Sources of HAP emissions for the emulsion subcategory include raw material storage vessels, front-end process vents, back-end process operations, wastewater operations, and equipment leaks. Most of the emissions come from back-end process operations, which are predominately drying and finishing. The primary HAP emitted by emulsion styrene-butadiene rubber production are styrene and 1–3,butadiene. Sources of HAP emissions for the solution subcategory include raw material storage vessels, front-end process vents, back-end process operations, wastewater operations, and equipment leaks. Most of the emissions come from back-end process operations. The primary HAP emitted by production of solution styrene butadiene rubber are hexane, butadiene, styrene, and toluene. Sources of HAP emissions from the latex production subcategory include raw material storage vessels, front-end process vents, wastewater operations, and equipment leaks. The primary HAP emitted are styrene and butadiene.

The ANPRM data set for the Styrene-Butadiene Rubber and Latex Production source category includes information for 15 facilities, seven of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Styrene-Butadiene Rubber and Latex Production source category, the ANPRM data set includes data for the entire industry. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date emissions and emissions release characteristic data for eight of these 15 facilities. The industry and EPA consider these data to be the most accurate emissions and emissions release characteristic data available for the styrene butadiene rubber and latex

production processes at these facilities. For these eight facilities, EPA replaced all styrene butadiene rubber and latex production emissions and emissions release characteristic data in the NEI with these updated industry data.

In the ANPRM data set, styrene and 1,3-butadiene are emitted in the greatest amounts and account for about 88 and 8 percent of the total emissions, respectively.

13. Acrylonitrile-Butadiene-Styrene Production

Acrylonitrile-butadiene-styrene resins consist of a terpolymer of acrylonitrile, butadiene, and styrene and can be synthesized by emulsion, suspension, and continuous mass polymerization. The majority of acrylonitrile-butadiene-styrene resin production is by batch emulsion. The primary HAP emissions during the acrylonitrile-butadiene-styrene production process occur via equipment leaks and process vents. Other emission points include storage vessels, wastewater operations, and heat exchange systems. Typical products made from acrylonitrile-butadiene-styrene resins are piping, refrigerator door liners and food compartments, automotive components, telephones, luggage and cases, toys, mobile homes, and margarine tubs. The major HAP expected to be emitted by the Acrylonitrile-Butadiene-Styrene Production source category are acrylonitrile, butadiene, and styrene.

The ANPRM data set for the Acrylonitrile-Butadiene-Styrene Production source category includes information for seven facilities, six of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Acrylonitrile-Butadiene-Styrene Production source category, the ANPRM data set includes data for about half of the industry. In the ANPRM data set, styrene and acrylonitrile are emitted in the greatest amounts and account for about 65 percent of the total emissions.

The major anomalies associated with the data set for this source category include the number of facilities in the source category (i.e., only about half of the facilities in the category appear to be included in the inventory) and the specific HAP emitted by individual facilities. Some HAP expected to be reported (styrene and 1,3-butadiene) are not included for all the plants in the data set and other unexpected HAP (e.g., ethylene dichloride and ethylene oxide) are reported to be emitted by at least one facility.

14. Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Resin Production

Methyl methacrylate-acrylonitrile-butadiene-styrene is an acrylic graft copolymer. Chemically, graft copolymers are prepared by attaching a polymer as a branch to the chain of another polymer of a different composition. Typical products made from methyl methacrylate-acrylonitrile-butadiene-styrene resins are piping, refrigerator door liners and food compartments, automotive components, telephones, luggage and cases, toys, mobile homes, and margarine tubs. Major HAP expected to be emitted by the Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene source category are acrylonitrile, butadiene, and styrene.

The ANPRM data set for the Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene source category includes information for one facility, which is classified as a major source in the NEI. Based on our previous estimates of the number of facilities in the Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene source category, the ANPRM data set includes data for the whole industry. In the ANPRM data set, the six HAP reported to be emitted include styrene, acrylonitrile, 1,3-butadiene, methyl methacrylate, cumene, and ethyl benzene. Styrene accounts for almost 83 percent of the mass emitted.

One major anomaly associated with the data set for this source category is that nearly all of the emissions points are reported to be fugitive sources, but the data includes only NEI default ''virtual stack'' emissions parameters for these sources.

15. Methyl Methacrylate-Butadiene-Styrene Production

Methyl methacrylate-butadiene-styrene polymers are prepared by grafting methyl methacrylate and styrene onto a styrene-butadiene rubber in an emulsion process. The product is a two-phase polymer used as an impact modifier for rigid polyvinyl chloride products. These products are used for applications in packaging, building, and construction. Emission points for methyl methacrylate-butadiene-styrene resin production include process vents, equipment leaks, storage vessels, and wastewater operations. Major HAP expected to be emitted by the Methyl Methacrylate-Butadiene-Styrene Production source category include butadiene, styrene, acrylonitrile, and methyl methacrylate.

The ANPRM data set for the Methyl Methacrylate-Butadiene-Styrene Resin Production source category includes information for three facilities, each of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Methyl Methacrylate-Butadiene-Styrene Production source category, the ANPRM data set includes data for each facility in the industry. In the ANPRM data set, toluene, methyl methacrylate, styrene, and 1,3-butadiene account for nearly all of the emissions.

The major anomalies associated with the data set for this source category include the HAP emitted. Some HAP are emitted by one facility and possibly should be emitted by the other facilities in the source category. In addition, nearly all of the emission release parameters are NEI default values.

16. Nitrile Resins Production

Nitrile resins are synthesized through the polymerization of acrylonitrile, methyl acrylate, and butadiene latex using an emulsion process. Nitrile resin products are commonly used in packaging applications (e.g., food packaging). Emissions points for nitrile resin manufacturing processes are process vents and equipment leaks. Emissions from storage tanks, such as those used to store acrylonitrile, are also possible. The major HAP expected to be emitted by the nitrile resins production source category is acrylonitrile.

The ANPRM data set for the Nitrile Resins source category includes information for one facility, which is classified as a major source in the NEI. Based on our previous estimates of the number of facilities in the Nitrile Resins source category, the ANPRM data set includes data for the whole industry. Acrylonitrile is the HAP emitted in the largest quantity, accounting for over 55 percent of the total HAP mass emitted.

One major anomaly associated with the data set for this source category is that 100 percent of the emission release parameters are NEI default values.

17. Polyethylene Terephthalate Production

Three different types of resins are made by sources covered by the Polyethylene Terephthalate Production source category: Solid-state resins (polyethylene terephthalate bottle grade resins); polyester film; and engineering resins. They are all thermoplastic linear condensation polymers based on dimethyl terephthalate or terephthalic acid. Polyethylene terephthalate melt-phase polymer is used in the production of all three of these resins. Polyethylene terephthalate production can occur via either a batch or continuous process. The most common use of polyethylene terephthalate solid-state resins is in soft drink bottles, and some industrial fiber-

graded polyester (e.g., for tire cord) is also produced from polyethylene terephthalate solid-state resins. The most common uses of polyethylene terephthalate film are photographic film and magnetic media. Polyethylene terephthalate is used extensively in the manufacture of synthetic fibers (i.e., polyester fibers), which compose the largest segment of the synthetic fiber industry. The most common uses of polyester fibers are apparel, home furnishings, carpets, fiberfill, and other industrial processes. Emissions sources present at polyethylene terephthalate production processes include raw material storage tanks, mix tanks, prepolymerization and polymerization reaction vents and process tanks, cooling towers, and methanol recovery systems. Major HAP emissions expected from the Polyethylene Terephthalate Production source category are ethylene glycol, methanol, acetaldehyde, and dioxane.

The ANPRM data set for the Polyethylene Terephthalate source category includes information for 22 facilities, 21 of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Polyethylene Terephthalate Production source category, the ANPRM data set includes data for about two-thirds of the facilities in the industry. In the ANPRM data set, volatile organic HAP dominate the total mass emissions, with methanol, ethylene glycol, acetaldehyde, methylene chloride, and mixed xylenes accounting for over three-fourths of the total emissions.

The major anomalies associated with the data set for this source category include the number of facilities in the source category and the HAP emitted. Some HAP expected to be reported (methanol, acetaldehyde, and dioxane) are not included for all the plants in the data set.

18. Polystyrene Production

Polystyrene resins are those produced by the polymerization of styrene monomer. This type of resin can be produced by three methods: (1) Suspension polymerization (operated in batch mode); (2) mass (operated in a continuous mode); and (3) emulsion process (operated in a continuous mode). The mass and suspension methods are the most commercially significant, whereas use of the emulsion process has decreased significantly since the mid-1940s. The uses for polystyrene resin include packaging and one-time use, expandable polystyrene beads, electronics, resellers and compounding, consumer and institutional products, and furniture, building, or construction uses. A wide variety of consumer and construction products are made from polystyrene resins, including disposable dinnerware, shower doors, light diffusers, soap dishes, insulation board, food containers, drain pipes, audio and video tape, picnic coolers, loose fill packaging, and tubing. The major HAP expected to be emitted by the polystyrene source category is styrene.

The ANPRM data set for the polystyrene resins source category includes information for 23 facilities, 14 of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Polystyrene Production source category, the ANPRM data set is missing data for 5 facilities in the industry. In the ANPRM data set, styrene is emitted in the greatest amounts and accounts for about 65 percent of the total emissions.

The major anomalies associated with the data set for this source category include facility representation of the source category and the HAP emitted. Some unexpected HAP, including tetrachloroethylene, naphthalene, ethyl chloride, and several metals, are reported to be emitted by some facilities.

19. Styrene-Acrylonitrile Production

Styrene-acrylonitrile resins are copolymers of styrene and acrylonitrile. Styrene-acrylonitrile resins may be synthesized by emulsion, suspension, and continuous mass polymerization; however, the majority of production is by batch emulsion. Typical uses include automobile instrument panels and interior trim and housewares. Emission points along the styrene-acrylonitrile resin production process include equipment leaks, process vents, storage vessels, and wastewater operations. Major HAP expected to be emitted by the Styrene-Acrylonitrile Production source category are acrylonitrile and styrene.

The ANPRM data set for the Styrene-Acrylonitrile Production source category includes information for three facilities, all of which are classified as major sources in the NEI. Based on our previous estimates of the number of facilities in the Styrene-Acrylonitrile Production source category, the ANPRM data set is missing data for 3 facilities in the industry. Many facilities that produce acrylonitrile-butadiene-styrene resins also produce styrene-acrylonitrile, because much of the styrene-acrylonitrile resins that are produced are used as feedstock in the production of acrylonitrile-butadiene-styrene. Therefore, for two of these plant sites, we could not distinguish whether certain emissions units belonged to the Acrylonitrile-Butadiene-Styrene or the Styrene-Acrylonitrile Production source categories. For these two plant sites, the emissions units in question were assigned to the Acrylonitrile-Butadiene-Styrene Production source category and no emissions units were assigned to the Styrene-Acrylonitrile Production source category. For the third plant site, EPA assigned the Styrene-Acrylonitrile Production MACT code to all the processes that emitted styrene or acrylonitrile and included these units in the ANPRM data set for the Styrene-Acrylonitrile Production source category. For this facility, styrene is the HAP emitted in the largest quantity accounting for over 55 percent of total HAP mass emitted. Ethyl benzene, 1,3-butadiene, and toluene are also reported in relatively large quantities and collectively account for about 35 percent of the total emissions.

The major anomalies associated with the data set for this source category include the number of facilities in the source category, the use of county centroid locations as default emissions release locations, and the use of NEI default values for 100 percent of the emissions release parameters. In addition, one HAP (acrylonitrile) is expected to be emitted in larger quantities than reported in the NEI.

20. Primary Aluminum Reduction Plants

Primary aluminum plants produce aluminum metal from alumina ore through the electrolytic reduction of aluminum oxide (alumina) by direct current voltage in an electrolyte (called ''cryolite'') of sodium aluminum fluoride. All primary aluminum facilities have potlines that produce aluminum metal, and also have a paste production operation. In addition, some facilities have anode bake furnaces that are used in the production of aluminum anodes. Potlines are categorized based primarily on differences in the process operation, equipment, and the applicability of control devices. HAP expected to be emitted by primary aluminum production sources include hydrogen fluoride and POM, including PAH (e.g., anthracene, benzo(a) pyrene, and naphthalene) that are part of the POM HAP category.

The ANPRM data set for the primary aluminum reduction source category includes information for 20 primary aluminum facilities. Of these 20 facilities, 19 are classified as major sources in the NEI. Based on our previous estimates of the number of primary aluminum reduction facilities,

this includes over 85 percent of the industry. Although a wide range of compounds are reported as emissions from these facilities in the ANPRM data set, carbonyl sulfide, hydrogen fluoride, and hydrochloric acid make up over 96 percent of the total emissions by mass. Hydrogen fluoride is the most common HAP reported as an emission (reported for 18 facilities); carbonyl sulfide and hydrochloric acid are reported as emissions by 11 and 7 facilities, respectively. A wide variety of PB HAP are reported, including numerous PAH and the metals lead, cadmium, and mercury and their associated compounds. For reported emissions of POM chemicals, emissions are grouped into one of seven POM categories. We encourage commenters to provide the individual chemical(s) that make up the POM.

The major anomalies associated with the data set for this source category include the specific HAP emitted by individual facilities and the speciation of POM. Certain HAP (e.g., chlorine, hydrogen chloride, POM) are not included for all the facilities in the data set.

21. Printing and Publishing

The printing and publishing source category includes facilities that use lithography, rotogravure, and other methods to print a variety of substrates, including paper, plastic, metal foil, wood, vinyl, metal, and glass. The MACT standards focused on those facilities that perform publication rotogravure printing, product and package rotogravure printing, and wide-web flexographic printing. Publication rotogravure printing refers to printing using a rotogravure press of various paper products, including catalogs, magazines, direct mail advertisements, display advertisements, miscellaneous brochures and other advertisements, newspaper sections and inserts, periodicals, and telephone directories. Product and packaging rotogravure printing entails the production, on a rotogravure press, of any printed substrate not otherwise defined as publication rotogravure printing. This includes (but is not limited to) folding cartons, flexible packaging, labels and wrappers, gift wraps, wall and floor coverings, upholstery, decorative laminates, and tissue products. Wide-web flexographic printing is a technique for printing substrates of 18 inches or wider in which the applied pattern is raised above the printing plate and the image carrier is made of rubber or other elastomeric materials. The wide-web flexographic presses are used to print flexible and rigid packaging; newspapers, magazines, and directories; paper towels, tissues, and similar products; and printed vinyl shower curtains and wallpaper. Research and laboratory facilities are not subject to the provisions of the MACT standards unless they are collocated with production lines. The NESHAP applies to HAP present in the inks, ink extenders, solvents, coatings, varnishes, primers, adhesives, and other materials applied with rotogravure and flexographic plates.

The primary HAP expected to be emitted from printing and publishing operations are toluene, xylene, ethylbenzene, methanol, methyl isobutyl ketone, ethylene glycol, and certain glycol ethers.

At the time of MACT promulgation in 1995, EPA estimated that there were approximately 200 publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing facilities nationwide that would be subject to these MACT regulations.

The ANPRM dataset for the printing and publishing source category contains 463 facilities, of which 216 are classified as major sources in the NEI. The HAP emitted in largest quantities from these sources are toluene, glycol ethers, methyl isobutyl ketone, and xylene (mixture of o-, m-, and p-isomers). Emissions from these HAP account for nearly 94 percent of the mass emitted across all 463 facilities. POM is the only PB HAP reported in the ANPRM data set for this source category.

For reported emissions of POM chemicals, emissions are grouped into one of seven POM categories. We encourage commenters to provide the individual chemical(s) that make up the POM.

The major anomalies associated with the data set for this source category are related to the HAP emitted. Emissions of several HAP, including trichloroethylene, tetrachloroethylene, p-dioxane, benzene, and naphthalene, are reported to be emitted by a small percentage of sources in this category. These HAP may be emitted from other on-site processes. We are requesting data on these HAP emissions.

22. Shipbuilding and Ship Repair

The shipbuilding and ship repair industry consists of establishments that build, repair, repaint, convert, and alter ships. In general, activities and processes involved in ship repair and new ship construction are relatively similar. Operations include fabrication of basic components from raw materials, welding components and parts together, painting and repainting, overhauls, ship conversions, and other alterations. Nearly all shipyards that construct new ships also perform major ship repairs. Marine coatings used on offshore oil and gas well drilling and production platforms are not included in this source category.

Emissions of HAP from shipbuilding and ship repair facilities result from painting, cleaning solvents, welding, metal forming and cutting, and abrasive blasting performed during ship repair and shipbuilding operations. HAP expected to be emitted include a range of organic compounds used as solvents, including toluene, xylene, ethylbenzene, methanol, methyl isobutyl ketone, ethylene glycol, and glycol ethers. In addition to the organic HAP, relatively small amounts of inorganic HAP such as chromium, hexavalent chromium, manganese, nickel, and lead are expected to be emitted from painting, welding, metal forming and cutting, and abrasive blasting performed during ship repair and shipbuilding operations.

At the time of NESHAP promulgation in 1995, EPA estimated that there were approximately 437 facilities of varying capabilities involved in the construction and repair of ships in the United States; approximately 35 of these facilities qualified as major sources of HAP emissions.

The ANPRM data set for the shipbuilding and ship repair source category contains 88 facilities, of which 71 facilities are classified as major sources. In conjunction with previous efforts for this source category, the industry had collected and submitted up-to-date welding and blasting emissions data for 13 facilities. The industry and EPA consider these data to be the accurate welding and blasting emissions data for these facilities. For 12 of these 13 facilities, the 2002 NEI did not include any emissions from these welding and blasting processes. The newly collected data was added to the ANPRM data set for these facilities. The data was not added for the 13th facility, which did have detailed state-submitted welding and blasting emissions data already included in the NEI. As no welding and blasting emissions data were available for the other facilities in the source category, no data was added to the ANPRM data set for these facilities. The HAP emitted in largest quantities in total from these sources are xylenes and ethylbenzene. Total emissions from these two HAP account for 63 percent of the mass emitted across all 88 facilities. PB HAP emissions reported in the ANPRM data set for the shipbuilding and ship repair

source category include cadmium, lead compounds, POM, and mercury.

For emissions reported generically as ''chromium'' or ''chromium and compounds,'' emissions are speciated for this source category as 66 percent ''chromium (III) compounds'' and 34 percent ''chromium (VI) compounds.'' We encourage commenters to review this assumption and provide specific chromium (VI) and chromium (III) data where possible.

For reported emissions of POM chemicals, emissions are grouped into one of seven POM categories. We encourage commenters to provide the individual chemical(s) that make up the POM.

The major anomalies associated with the data set for this source category are related to the HAP emitted. Some metal HAP expected to be reported from welding, blasting, and other metalworking processes are not included for all the facilities in the data set. We have been working with the industry to improve these anomalies, and will continue these efforts. However, we also welcome additional data on these emissions.

V. What are we specifically seeking comment on?

The primary purpose of this ANPRM is to solicit comments on the source-category specific data included in the ANPRM data sets. Therefore, we are asking you to carefully review the facility-specific data available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* and provide corrections to these data. These data include information for each emissions release point at each facility in each of the 22 source categories included in Group 2 of the RTR Phase II. For large integrated facilities with multiple processes representing multiple source categories, it is often difficult to clearly distinguish the source category to which each emission point belongs. For this reason, the data available for download include not only the data for each facility in the specific source category, but also the data for each entire facility.

In addition to the ANPRM data sets for each source category, we are providing a downloadable file which describes each source category and summarizes the major data anomalies. These files are being made available to focus the review of emissions data on the emission points and pollutants which are expected to contribute the most to significant inhalation exposures and health risks. More information on how to download the data and how to submit data corrections is provided in Sections VI and VII of this ANPRM, respectively.

In reviewing the data, we are requesting both general comments about how well the data represent the source categories and more specific comments regarding the emission-point specific information included in the ANPRM data set for each facility in the 22 source categories. We also ask that you examine situations in which we made changes or additions to the NEI data and provide comments and data that will help us improve or clarify the information in order to minimize any anomalies. We are particularly interested in the following information regarding source category representation in the data:

- Names and addresses for any facilities with processes which should be, but are not included in the data set for a specific source category.
  - If known, whether data for these facilities are included in the NEI.
- Facilities whose data should not be included in the data set for a specific source category—please provide a brief description of the facilities and an explanation of why they do not belong in the data set for that source category.
- Facilities in the data set for a source category that are not major sources for HAP—please provide documentation verifying the area source status.

We would also like comment on the facility-specific and emission-point specific data, as well as our assumptions about certain data characteristics. As discussed further below, the areas in which further information and/or correction or clarification is requested, include the following:

- Facility location and identification.
  - Facility name.
  - Facility address.
  - Facility category code (i.e., major or area source).
- Emission point data
  - SCC and MACT codes
  - Emissions (tons per year (TPY)) of each HAP.
  - Emission release point type (i.e., fugitive, vertical, horizontal, gooseneck, vertical with raincap, or downward facing vent).
  - Emissions release characteristics: stack height and diameter, exit gas temperature, velocity, and flow rate.
  - Emission point latitude and longitude coordinates.
- Data characteristics.
  - Acute emissions factors.
  - Speciation of metal HAP and POM.
  - HAP emissions performance level (e.g., actual, allowable, maximum).

At the facility level, we are asking for input on the name and address of the facility, whether the facility is a major or area source for HAP, and facility identification codes. The facility name should include at least the company name and may also include facility identification information, such as ''Plant A'' or ''Ohio River Works.'' The address should include the street address of the plant location, as well as the city, county, State, and zip code for that location. We are also requesting verification of the area/major source status of each facility.

For each individual emission point, we are asking for comments on the SCC and MACT code to which each emission point is assigned, the HAP emitted, the mass of emissions reported for each HAP, and the release characteristics. For large facilities with multiple processes representing more than one source category, we ask that you pay particular attention to the MACT and SCC codes, so that emission points and emissions are assigned to the appropriate source category. We also ask that you provide comments on all HAP emitted from a process, even if you know the emission levels are very low. The high toxicity of some HAP means that even emission levels one might otherwise consider insignificant (in terms of mass) can have a significant risk impact. This is particularly true for PB HAP. These compounds have high toxicities and may be emitted by some of the source categories being reviewed. It is critical that we obtain the most accurate, speciated emission estimates possible to be used in the multi-pathway assessments that will be conducted prior to proposal of regulatory actions.

If you consider the data in the ANPRM data sets unrepresentative of the emissions from a facility, explain why these data are not representative and submit better data where available. When submitting emissions data, we ask that you provide documentation of the basis for the revised values. We will need appropriate documentation to support any suggested changes. Data corrections are discussed more in section VII.

In addition to the emissions data, we also request comments and revisions on the release characteristics for individual emission points. First, you should check the emission release point type description. Most of the emission points in the NEI are either classified as vertical or fugitive, although the options also include horizontal, goose neck, vertical with rain cap, and downward facing vent. Then you should check the release parameters, which include stack height, exit gas temperature, stack diameter, exit gas velocity, and exit gas flow rate. Quite often the NEI contains default release parameters, so providing

actual parameters will improve the quality of the data and the modeling results.

Emission point location is a parameter that can have a significant effect on the modeling results. Ideally, we would like a specific set of coordinates for every emission point. In many instances, a single set of coordinates is used for all emission points at a facility. In these situations, we request information on emission-point specific coordinates. If such detailed coordinates are already in the ANPRM data sets, we would like you to review them carefully and provide any updates or corrections needed.

To model fugitive sources, the release parameters used include the height, length, width, and angle of the area where the fugitive emissions sources are located, along with the temperature. The NEI contains fields for these parameters, but they are rarely populated. Instead, the NEI contains a set of default vertical stack parameters for fugitive sources, which have been designed to provide the same dispersion as a low-lying point source with minimal plume rise. These are a temperature of 72° Fahrenheit, a diameter of 0.003 feet, a velocity of 0.0003 feet per second, and a flow rate of 0 cubic feet per second. We request comment on the use of these release characteristics to effectively model fugitive emission sources as pseudo-point sources.

We are also requesting comments concerning certain data characteristics. This includes the speciation of several metal HAP, including mercury and chromium, and polycyclic organic material. These HAP were separated into their various forms, such as hexavalent and trivalent chromium, within NEI using the procedures established by the National Air Toxics Assessment. We are requesting comment on whether the speciation factors used are appropriate and ask that any suggested alternative approaches be accompanied by documentation supporting that alternative.

Also, to screen for potentially-significant short-term exposures, maximum short-term (one-hour) emission rates will be developed by multiplying the average annual hourly emission rates by ten. We would like comments on whether this factor represents a reasonable approximation for each emission point in order to estimate acute exposures and risks. If you believe that any particular emission point does not represent a reasonable approximation, please provide your rationale and a suggestion for a more appropriate ratio. This will assist us in our assessment of short-term impacts and risks.

As noted in section IV, the emissions values in the ANPRM data set generally represent actual emission levels. Where actual emissions data is not already included, we request that commenters provide such data.

In addition to comments on the data included in the data sets for each source category, we will accept other comments related to this ANPRM. As described in section VII of this ANPRM, all comments and supporting data must be submitted to the docket for this action.

VI. How may I access the data for a specific source category?

Source category descriptions and the ANPRM data sets are available on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* Information is available to be downloaded from this Web page for each source category in two separate files. One file contains a description of the source category, and a separate file includes the detailed ANPRM data set for the source category. These files must be downloaded from the Web site to be viewed.

The file containing the source category description is available in an Adobe® PDF format (this file format is viewable with Adobe® Reader, which may be downloaded at *http://www.adobe.com/products/acrobat/readermain.html*) and contains the following information:

- A description of the processes and major products
- The estimated number of facilities in the source category.
- A summary of emission points types and HAP emissions from the source category.
- A summary of the anomalies associated with the data for that source category.

The ANPRM data set for each source category is included in a separate file, which must be downloaded from the RTR Web *page—http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* These are Microsoft® Access files, which require Microsoft® Access to be viewed (if you do not have Microsoft® Access, contact Anne Pope by telephone ((919) 541–5373) or by e-mail (*pope.anne@epa.gov*) for other data viewing options). Each file contains the following information from the NEI for each facility in the source category:

Facility data	Emissions data
EPA Region	Pollutant Code
Tribal Code	Pollutant Code Description
Tribe Name	Emissions (TPY)
State Abbreviation	MACT Code
County Name	MACT Flag
State County FIPS	SCC Code
NEI Site ID	SCC Code Description
Facility Name	Emission Unit ID
Location Address	Process ID
City Name	Emission Release Point ID
State Name	Emission Release Point Type
Zip Code	Stack Default Flag
Facility Registry	Stack Height
Facility Registry Identifier	
State Facility Identifier	Exit Gas Temperature
SIC Code	Stack Diameter
SIC Code Description	Exit Gas Velocity
NAICS Code	Exit Gas Flow Rate
Facility Category Code	Longitude
Facility Category	Latitude
	Location Default Flag
	Data Source Code
	Data Source Description
	HAP Emissions Performance Level

Facility data	Emissions data
	Start Date End Date

More information on these NEI data fields can be found in the NEI documentation at *http://www.epa.gov/ttn/chief/net/2002inventory.html#documentation.*

VII. How do I submit suggested data corrections?

The source category-specific ANPRM data sets are available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. To suggest revisions to this information, we request that you complete the following steps:

1. Download the Microsoft® Access file containing the ANPRM data set for a source category.

2. Within this downloaded file, enter suggested revisions in the data fields appropriate for that information. The data fields that may be revised include the following:

Facility data	Emissions data
REVISED Tribal Code	REVISED Emissions (TPY)
REVISED County Name	REVISED MACT Code
REVISED Facility Name	REVISED SCC Code
REVISED Location Address	REVISED Emission Release Point
REVISED City Name	REVISED Stack Height
REVISED State Name	REVISED Exit Gas Temperature
REVISED Zip Code	REVISED Stack Diameter
REVISED Facility Registry	REVISED Exit Gas Velocity
REVISED State Facility	REVISED Exit Gas Flow Rate
REVISED Facility Category	REVISED Longitude
	REVISED Latitude
	REVISED HAP Emissions

3. Fill in the following commenter information fields for each suggested revision:
- Commenter Name.
- Commenter E-Mail Address.
- Commenter Phone Number.
- Revision Comments.

4. Gather documentation for any suggested emissions revisions (e.g., performance test reports, material balance calculations, etc.).

5. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to the docket for this ANPRM (through one of the methods described in the **ADDRESSES** section of this ANPRM). To help speed review of the revisions, it would also be helpful to submit the suggestions to EPA directly at *RTR@epa.gov.*

6. If you are providing comments on a facility with multiple source categories, you need only submit one file for that facility, which should contain all suggested changes for all source categories at that facility.

We strongly urge that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* Web page. Data in the form of written descriptions or other electronic file formats will be difficult for EPA to translate into the necessary format in a timely manner. Additionally, placing the burden on EPA to interpret data submitted in other formats increases the possibility of misinterpretation or errors.

VIII. What additional steps are expected after EPA reviews the comments received?

Once EPA receives comments on the Group 2 emissions and emissions release data, we plan to revise the ANPRM data sets based upon public comment and supporting documentation, model with the new data, and proceed with proposing and promulgating residual risk and technology review standards as appropriate. More detail of this process is provided in sections C, D, and E of section II of this ANPRM.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: March 23, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–5805 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Siskiyou Mountains salamander (*Plethodon stormi*) and Scott Bar salamander (*Plethodon asupak*) as threatened or endangered, under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing these species may be warranted. Therefore, with the publication of this notice, we are initiating status reviews of these species, and we will issue a 12-month finding to determine if the petitioned action is warranted. To ensure that the status review of the Siskiyou Mountains and Scott Bar salamanders is comprehensive, we are soliciting scientific and commercial data

regarding these species. A determination on critical habitat will be made if and when a listing action is initiated for these species.

DATES: The finding announced in this document was made on March 29, 2007. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by May 29, 2007.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Yreka Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1829 S. Oregon Street, Yreka, CA 96097. Submit new information, materials, comments, or questions concerning these species to us at the address above or via electronic mail at *Siskiyou_salamander@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, Yreka Fish and Wildlife Office (see **ADDRESSES**), or at (530) 842–5763. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Siskiyou Mountains and Scott Bar salamanders. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the Siskiyou Mountains and Scott Bar salamanders. We are seeking information regarding the species' historical and current status and distribution, biology and ecology, ongoing conservation measures for the species and habitat, and threats to either species or habitat.

Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.).

If we determine that listing either the Siskiyou Mountains salamander or Scott Bar salamander is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, with regard to areas within the geographical area currently occupied by the species we also request data and information on what may constitute physical or biological features essential to the conservation of either species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside of the geographical area occupied by the species, which are essential to the conservation of either species. Please provide specific comments as to what, if any, critical habitat should be proposed for designation, if either species is proposed for listing, and why that proposed habitat meets the requirements of the Act.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES**) by the date listing in the **DATES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Background

Section 4(b)(3)(A) of the Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is based on information contained in the petition and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

In making this finding, we relied on information provided by the petitioners and otherwise available in our files at the time of the petition review. We had access to a Geographic Information System database of all known Siskiyou Mountains salamander and Scott Bar salamander sites, based on data obtained from researchers, the State of California, the United States Forest Service, and private land managers. We evaluated the information provided by the petitioners in accordance with 50 CFR 424.14(b). The process of making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is based on a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On June 18, 2004, we received a petition dated June 16, 2004, from the Center for Biological Diversity, Klamath-Siskiyou Wildlands Center, and Noah Greenwald, to list the Siskiyou Mountains salamander (*Plethodon stormi*) as a threatened or endangered species on behalf of themselves and five other organizations. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In their petition, the petitioners assert that there are three separate distinct population segments (DPSs) of the Siskiyou Mountains salamander, one of which consists of the Scott Bar salamander. Alternatively, the petitioners assert that the Scott Bar salamander is a separate species and request that it be considered independently for listing. Since the time of the petition, the Scott Bar salamander (*Plethodon asupak*) has been recognized as a species separate from the Siskiyou Mountains salamander (Mead *et al.*

2005) and we have reviewed it separately in making this finding. The petitioners also requested the Service to consider whether the Siskiyou Mountains salamander warrants listing throughout a significant portion of its range, and requested designation of critical habitat for both species concurrent with their listing. In a July 19, 2004, letter to the petitioners, we responded that we reviewed the petition for both species and determined that an emergency listing was not warranted, and that because of inadequate funds for listing and critical habitat designation, we would not be able to otherwise address the petition to list the Siskiyou Mountains salamander and Scott Bar salamander at that time.

On June 23, 2005, we received a 60-day notice of intent to sue, and on August 23, 2005, the Center for Biological Diversity and four other groups filed a Complaint for Declaratory and Injunctive Relief in Federal District Court for the District of Oregon (*Center for Biological Diversity*, *et al.* v. *Norton et al.*, No. 3:05-CV–1311-BR), challenging our failure to issue a 90-day finding on the petition to list the Siskiyou Mountains salamander and Scott Bar salamander. On December 28, 2005, we reached an agreement with the plaintiffs to complete the 90-day finding by April 15, 2006, and if we determined that the petition presented substantial information that listing may be warranted, to complete the 12-month finding by January 15, 2007.

On April 17, 2006, the Service made its 90-day finding (71 FR 23886; April 25, 2006). That finding concluded that the petition did not present substantial scientific or commercial information to warrant the listing of Siskiyou Mountains and Scott Bar salamanders.

On July 6, 2006, the Center for Biological Diversity and others filed suit in the United States District Court for the Northern District of California (*Center for Biological Diversity et al.* vs. *Dirk Kempthorne et al.*, No. C–06–4186–WHA) challenging the merits of our April 17, 2006, 90-day finding.

On January 19, 2007, the U.S. District Court determined the 90-day finding was arbitrary and capricious, and the Court vacated and remanded the finding, and ordered the Service to make a new 90-day finding by March 23, 2007. This new finding complies with the Court's order.

Species Information

For the purpose of this finding, the Service is evaluating the Siskiyou Mountains salamander and Scott Bar salamander separately. However, we recognize that all research on the ecology of these species was conducted prior to recognition of the Scott Bar salamander as a separate species. To date, information specific to the Scott Bar salamander is limited to its distribution and range. Both species are members of the Family Plethodontidae, the lungless salamanders, and as such their survival is dependent upon similar ecological requirements. The geographic ranges of the Siskiyou Mountains salamander and Scott Bar salamander are contiguous, but not overlapping, occur over a relatively small area (approximately 405,000 acres (ac) (164,000 hectares (ha))), and have similar environmental conditions. Additionally, information in our files suggests that habitat associations of these species are generally the same, although a rigorous study comparing their habitat requirements has not been conducted. The most significant difference between these species is their range; the range of the Siskiyou Mountains salamander is approximately five times larger than that of the Scott Bar salamander. Therefore, for the purpose of this finding, the Service applied the current literature describing the biological characteristics and ecology of the Siskiyou Mountains salamander to both species.

Description and Taxonomy

Like others in the family Plethodontidae, the Siskiyou Mountains salamander and Scott Bar salamander are completely terrestrial, medium-sized, slender-bodied salamanders with short limbs and a dorsal stripe. Both species are found in or near talus (loose surface rock) and fissured rock outcrops where moisture and humidity are high enough to allow respiration through their skin (Nussbaum *et al.* 1983). Both species are endemic to the Klamath-Siskiyou Mountains of southern Oregon and northern California.

The Siskiyou Mountains salamander was described in 1965 (Highton and Brame 1965), and is characterized by a modal number of 17 costal grooves (vertical creases along the side of the body) and 4 to 5.5 intercostal folds (folds of skin between the costal grooves) between the toes of adpressed limbs (limbs firmly pressed against the sides of the body) (Nussbaum *et al.* 1983; Leonard *et al.* 1993). Adults have a light-to purplish-brown dorsum, and the body is sprinkled with a moderate to dense array of white to yellow flecks that are concentrated on the sides and limbs and away from the light-brown dorsal stripe. Juveniles are black and have an olive-tan dorsal stripe that extends onto the tail.

Recent genetic analyses recognize the Siskiyou Mountains salamander as a distinct species from the Del Norte salamander (*Plethodon elongatus*) and the Scott Bar salamander (Mead *et al.* 2002, 2005; Mahoney 2004; Bury and Welsh 2005). Previously, observations of clinal variation in color and morphometric traits from coastal populations of Del Norte salamanders along the Klamath River to Siskiyou Mountains salamander populations in the Seiad Valley led Bury (1973) to propose possible intergradation between these two species, and Stebbins (1985, 2003) to demote the Siskiyou Mountains salamander to a subspecies of Del Norte salamander.

A number of studies (Pfrender and Titus 2002; DeGross 2004; Mead *et al.* 2005) have delineated three distinct genetic lineages within the Siskiyou Mountains salamander: Group I (*P. stormi* populations within the Applegate River drainage north of the Siskiyou crest), Group II (*P. stormi* populations south of the Siskiyou crest), and Group III (*P. asupak* populations). However, Group III is now considered a separate species, Scott Bar salamander.

Mead *et al.* (2005) described *Plethodon asupak*, the Scott Bar salamander, as a new species based on analysis of molecular (mitochondrial DNA) and morphological data from *Plethodon* populations near the confluence of the Klamath and Scott Rivers in Siskiyou County, California (Mahoney 2004; Mead *et al.* 2002, 2005). Molecular analysis shows the Scott Bar salamander to be the ancestral lineage from which the Del Norte salamander and Siskiyou Mountains salamander were derived (Mahoney 2004; Mead *et al.* 2002, 2005). For the purpose of this finding, the Service is evaluating the Scott Bar salamander as a species separate from the Siskiyou Mountains salamander. We recognize, however, that genetic research on these salamanders is ongoing, and the species' designations may be reconsidered in the future.

The Scott Bar salamander is more robust and has a wider head and longer limbs than either of its two most closely related sister species, the Del Norte salamander and Siskiyou Mountains salamander. It has fewer intercostal folds (2.5 to 3.5) between adpressed (flatly pressed back) limbs than either the Del Norte salamander (5 to 6) or the Siskiyou Mountains salamander (4 to 5), and the modal number of costal grooves (17) is one fewer than in the Del Norte salamander (18). The Scott Bar salamander has a longer body relative to its tail length and longer forelimbs and hindlimbs than the Siskiyou Mountains

salamander or Del Norte salamander. The coloration of the Scott Bar salamander is similar to that of the Siskiyou Mountains salamander and is described in Mead *et al.* (2005). Despite the morphological differences described in Mead *et al.* (2005), the two species are very difficult to distinguish in the field.

Habitat

Siskiyou Mountains salamanders and Scott Bar salamanders are found on forested slopes where rocky soils and talus outcrops occur. Occupied habitat for the Siskiyou Mountains salamander can range from small isolated rock outcrops to entire hillsides (Clayton *et al.* 2004). Occasionally these salamanders can be found under other types of cover such as bark, limbs, or logs, but only during wet weather when moisture is high and only if there are talus outcrops nearby (Nussbaum 1974; Nussbaum *et al.* 1983). Nussbaum (1974) characterized optimal habitat for the Siskiyou Mountains salamander as stabilized talus in old-growth forest stands on north-facing slopes. However, more recently, populations of both species have been found in rock outcrops in all forest age classes and on all slope aspects (Clayton *et al.* 2004; U.S. Department of Interior (USDI) 2005), as well as in managed stands (CDFG 2005). Siskiyou Mountains salamanders have been collected in the spring during the daytime at soil temperatures ranging from 38 to 52.3 degrees Fahrenheit (3.5 to 11.3 degrees Celsius) and at depths ranging from 0 to 18.0 inches (0 to 45.7 centimeters) (Nussbaum *et al.* 1983; Nussbaum 1974).

Range and Distribution

The Siskiyou Mountains salamander's range encompasses approximately 337,037 ac (136,500 ha) in three counties (Jackson, Josephine, and Siskiyou Counties) of southwestern Oregon and in northern California (Clayton and Nauman 2005a). More specifically, this species has been detected in the Applegate River drainage of southern Oregon south to the Klamath River watershed of northern California. In California, recent genetic analyses indicate the species' range is bounded to the west by the Indian Creek drainage and to the east by the Horse Creek drainage (see DeGross 2004; Mahoney 2004; Mead *et al.* 2005; Mead 2006). It is known from sites ranging from 1,600 feet (488 meters) (Nussbaum *et al.* 1983) to approximately 1,800 meters (6,000 feet) in elevation (Clayton *et al.* 1999). Approximately 90 percent of the Siskiyou Mountains salamander's range occurs on Federal lands managed under the Northwest Forest Plan (NWFP) (USDA, USDI 1994). Within the NWFP area, 36 percent of the salamander's range occurs in reserves (Late-Successional Reserves, Administratively Withdrawn Areas, and Congressionally Reserved Areas), where timber harvest and other ground-disturbing activities are severely restricted; 10 percent occurs within Matrix lands generally available for timber harvest; and 44 percent occurs in Adaptive Management Areas (AMA), where habitat management guidelines are flexible and some timber harvest is expected to occur. The remaining 10 percent of the species' range occurs on private lands.

To date, approximately 200 Siskiyou Mountains salamander sites have been located (Clayton and Nauman 2005a). This number represents an unknown proportion of the total population, because surveys have not been conducted over the species' entire range. These sites occur primarily on Federal lands and are distributed across several NWFP land use allocations (Clayton *et al.* 2004). The USDA, USDI Species Review Panel (2002) reported that approximately 23 percent of known sites occur on reserve lands (Late-Successional Reserves and Congressionally Withdrawn Areas) (USDA, USDI 1994). The remaining sites occur on Adaptive Management Areas, Matrix lands, and private lands.

The Scott Bar salamander is found only in Siskiyou County, California, from just east of Seiad Valley to Scott Bar Mountain (Clayton and Nauman 2005b). The species' range extends north and south of the Klamath River and east and west of the Scott River and encompasses approximately 68,438 ac (27,717 ha). Approximately 82 percent of the Scott Bar salamander's range occurs on Federal lands: 58 percent on reserves (Late-Successional Reserves) and 24 percent on Matrix lands (USDA, USDI 1994). The remaining 18 percent of the species' range occurs on private lands.

Clayton and Nauman (2005b) reported that fewer than 10 sites are currently known for the Scott Bar salamander, although other sites are suspected. Based on our internal review of recent genetic analyses (Mahoney 2004; Mahoney 2005; Mead *et al.* 2005; Mead 2006), 17 Scott Bar salamander sites have now been verified. Within the presumed range of the Scott Bar salamander, numerous historical salamander detections have been assigned to the Siskiyou Mountains salamander. Because populations of the two species tend not to overlap (Mead 2006), it is reasonable to conclude that all salamander detections within what is now known to be the range of the Scott Bar salamander are Scott Bar salamanders. Thus, information in our files suggests that, within the range of the Scott Bar salamander, there are roughly 20 known salamander sites that are likely occupied by Scott Bar salamanders and are in addition to the 17 noted above (USDI 2006). To date, systematic surveys have not been conducted throughout this species' range; however, additional sites may be discovered in the future.

The 17 verified localities of the Scott Bar salamander are distributed across several watersheds that encompass the majority of the species' known range. Of these localities, 82 percent occur on Federal lands: 35 percent on reserves (Late-Successional Reserves) and 47 percent on Matrix lands (USDA, USDI 1994). The remaining 18 percent of the verified localities occur on private lands. Although the sample of known sites was not collected systematically, this distribution suggests that the species may be well distributed within its range.

Although the historic range of the Siskiyou Mountains salamander is unknown, the Service assumes that it was bounded to the west and south by the range of the Del Norte salamander (*Plethodon elongatus*), and to the east and northeast by drier climatic conditions and the associated vegetation communities. The range of the Scott Bar salamander consists of a polygon surrounded by the range of the Siskiyou Mountains salamander. The existing distribution of occupied sites for these species closely matches this description, and neither the petition nor information in our files provides information to suggest that a decline in extent of range has occurred for either species. Similarly, neither the petition nor information in our files provides information to suggest that significant areas within the species' ranges no longer support salamander populations. The petition states that significant portions of the species' ranges have been logged, suggesting the loss of salamander populations. However, as discussed in more detail below under Threats Analysis, Factor A, information from our files suggests that sites often remain occupied following logging (Farber *et al.* 2001; Clayton *et al.* 2004; CDFG 2005) or are recolonized after a few years (Welsh and Ollivier 1995). In addition, the Services' evaluation of the distribution of known salamander locations indicates that the salamanders are well-distributed throughout their ranges, including many areas with

evidence of past logging, with large gaps corresponding to roadless areas that have received little to no survey effort.

Evaluation of the range and potential population size for the Siskiyou Mountains salamander and Scott Bar salamander is strongly influenced by the species' low detectability and the amount and distribution of potentially suitable habitat. Because of their secretive habits, detection rates for these salamanders are very low, even though the species may be quite abundant locally (Nussbaum 1974; Clayton *et al.* 1999). Surveys within habitat known to be occupied are frequently negative (Clayton *et al.* 2004; CDFG 2005). Populations at individual sites likely range in size from a few individuals to thousands of individuals (Nussbaum 1974; Welsh and Lind 1992). Based on intensive field surveys, Nussbaum (1974) provided a species-wide ''conservative estimate'' of over 3 million Siskiyou Mountains salamanders. While the author acknowledged that a number of methodological problems may affect this estimate, it nonetheless suggests that the perceived rarity of this species may be more related to low detectability than to actual population size.

The USDA, USDI Species Review Panel (2001) evaluated results of project surveys conducted in the northern portion of the Siskiyou Mountains salamander's range, and estimated that 3 to 14 percent of the extent surveyed provides potentially suitable habitat. In a similar evaluation, Timber Products Company estimated that approximately 18 percent of their surveyed lands within the range of the Scott Bar salamander was composed of suitable talus habitat (S. Farber pers. comm. 2006). The information from both surveys suggests that suitable habitat for these species is patchy, and comprises a minor portion of these species' ranges.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the Siskiyou Mountains salamander and Scott Bar salamander as presented in the petition pose a concern with respect to the species' survival such that listing under the Act may be warranted. Our evaluation of these threats, based on information provided in the petition and available in our files, is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition claims that logging and wildfire pose the primary threats to Siskiyou Mountains salamander's and Scott Bar salamander's habitat and populations by altering habitat structures that influence the microclimatic conditions required by both species. The petition states that logging and wildfire increase surface temperatures and decrease relative humidity and soil moisture by removing forest cover. It also states that logging has the additional effect of compacting and realigning talus substrates. The petition states that it is likely a substantial, yet unquantified, amount of habitat has already been lost due to logging activities.

According to the petition, the effects of logging and wildfire on Siskiyou Mountains and Scott Bar salamanders are based on a sequence of relationships: the unique physiology and behavior of these species, their dependence on moist surface conditions in order to forage and reproduce, reduction of the occurrence of favorable surface conditions following loss of forest cover, and loss of viability of salamander populations inhabiting the resulting unfavorable conditions. Based on these assertions, the petition concludes that the rate and extent of timber harvest and fires will likely cause the two species to be threatened or endangered due to habitat loss in the foreseeable future.

The petition describes the physiological and behavioral traits of Siskiyou Mountains salamanders and Scott Bar salamanders that link them to habitats that provide moist conditions. Both species are lungless salamanders that require moisture in order to respire through their skin and to avoid dessication (Nussbaum *et al.* 1983). These traits act to limit the time during which the species can be active at the surface where foraging takes place (Nussbaum *et al.* 1983; Feder 1983). In the warm, dry environment characteristic of the eastern Klamath—Siskiyou Mountains, surface conditions favorable for activity by these salamanders is limited to relatively brief rainy periods in the spring and fall when soil moisture and relative humidity are high and temperatures moderate (Nussbaum *et al.* 1983; Clayton *et al.* 1999). This limitation is reflected in survey protocols for Siskiyou Mountains salamander, which require that surveys be restricted to periods of relative humidity above 65 percent, air temperature between 39.2 and 68 Fahrenheit (4 to 20 degrees Celsius), soil temperature between 38.3 and 64.4 degrees Fahrenheit (3.5 to 18 degrees Celsius), and moist soil conditions; outside of these parameters detection rates are low (Clayton *et al.* 1999). During the remainder of the year, these salamanders retreat underground into fissured rock substrates (Nussbaum *et al.* 1983).

Based on the relationships described above, the petition claims that habitat conditions that further limit above ground activity will result in reduced abundance and viability of Siskiyou Mountains salamander and Scott Bar salamander populations. The petition cites Ollivier *et al.* (2001), who state that shortened periods of surface conditions appropriate for feeding and breeding activities can limit both survivorship and recruitment of these salamanders due to reduced ability to achieve body mass and fat needed for reproduction. Based on physiological and ecological studies of plethodontid salamanders (Feder 1983), and the association of Siskiyou Mountains and Scott Bar salamanders (and the closely related Del Norte salamander in the Klamath province) with mature forested habitats (Nussbaum *et al.* 1983; Welsh and Lind 1988, 1991, 1995; Ollivier *et al.* 2001), it is reasonable to conclude that individuals living in drier, more open conditions may experience reduced fitness.

The petition cites Chen *et al.* (1993) to support the claim that removing or reducing canopy during logging or other activities can alter stand microclimates, which in turn would result in conditions unsuitable for surface activity by salamanders. Information in our files suggests that microclimatic variables such as soil moisture, fuel moisture, relative humidity, and air temperature are sensitive to changes in canopy, with open-canopied and unforested sites exhibiting drier conditions, reduced humidity, and warmer air and soil temperatures (Chen *et al.* 1995; Chen *et al.* 1999).

The petition states that rigorous pre- and post-logging studies have not been conducted on Siskiyou Mountains salamanders or Scott Bar salamanders. Information in our files also indicates

that this type of study has not been conducted on the similar Del Norte salamander in the drier portions of its range. However, the petition cites several studies from across North America (Dupuis *et al.* 1995; Ash 1997; deMaynadier and Hunter 1998; Herbeck and Larsen 1999) and specific to the Pacific Northwest (Bury and Corn 1988; Raphael 1988; Welsh 1990; Corn and Bury 1991; Welsh and Lind 1988, 1991,1995) that describe impacts of logging to other plethodontid salamanders. It is important to note that studies conducted in eastern and mid-western North America and much of the Pacific Northwest (Bury and Corn 1988; Raphael 1988; Welsh 1990; Corn and Bury 1991; Welsh and Lind 1988, 1991,1995; and Grialou *et al.* 2000) were conducted in mesic (relatively wet) forest types where environmental constraints (moisture, temperature) on salamander dispersal and survival are presumably less than in the dry eastern Klamath Mountains. In addition, most plethodontid salamander species studied in other areas of North America occupy soil, surface litter, and woody debris in mesic environments, whereas Siskiyou Mountains salamanders and Scott Bar salamanders occupy talus substrates that provide refuge from temperature extremes and dry conditions in xeric (relatively dry) environments. Therefore, inferences drawn from studies of other plethodontid species in mesic environments may be limited in their applicability to Siskiyou Mountains salamander or Scott Bar salamander populations in the dry eastern Klamath Mountains.

Studies from the midwestern and eastern United States (Ash 1997; deMaynadier and Hunter 1998; Herbeck and Larsen 1999) and western Canada (Dupuis *et al.* 1995) indicate that clear-cutting can have significant short-term impacts to plethodontid salamander abundance, and that second-growth stands that regenerate following clear-cutting typically do not support the same level of abundance as do older forests. Dupuis *et al.* (1995), Ash (1997), and Herbeck and Larsen (1999) reported that plethodontid salamanders were frequently absent from 2-to-5-year-old clear-cut forests.

All of the studies that examined relative abundance of plethodontid salamanders in different forest age classes (Dupuis *et al.* 1995; deMaynadier and Hunter 1998; Herbeck and Larsen 1999) found that second-growth stands supported salamanders, albeit at significantly lesser abundance than older forests. However, the impact of clear-cutting on salamanders may be temporary, as one study (Ash 1997) showed that salamanders returned to clear-cut sample plots 4 to 6 years after cutting, and their numbers increased rapidly. Linear regressions estimated that salamander numbers on clear-cut plots would equal or exceed numbers on forested plots by 20 to 24 years after cutting (Ash 1997).

Studies of more closely related plethodontid salamanders in the Pacific Northwest (Raphael 1988; Welsh 1990; Corn and Bury 1991; Welsh and Lind 1988, 1991,1995) found the abundance of plethodontid salamanders to be greater in older versus younger forests, and most of these studies found that difference to be significant. However, salamanders were still present in harvested areas. Raphael (1988) reported that while Del Norte salamanders were 2 to 3 times more abundant in adjacent old-growth forest, clear-cut areas still contained the species. Additional information in our files (Grialou *et al.* 2000) also suggests that western red-backed salamanders (*Plethodon vehiculum*) occupy recent clear-cut areas (2 to 4 years), although at a significantly lesser abundance than in adjacent older forests. H. Welsh and D. Ashton (2004) obtained similar results for Del Norte salamanders on the Six Rivers National Forest, where salamander abundance showed a marked decline following clear-cutting, but remained relatively stable in a lightly harvested stand. However, studies are not consistent with respect to abundance on recently clear-cut sites. Bury and Corn (1988) reported plethodontid salamanders to be absent in their two clear-cut sites, but their results were equivocal because detection rates of plethodontid salamanders were very low in all of the habitats studied. In contrast to the above studies, Corn and Bury (1991) found abundance of western red-backed salamanders was not significantly different between clear-cut areas less than 10 years old and old-growth forest.

Few peer-reviewed studies exist in our files comparing the demographics of plethodontid salamander populations in clear-cut areas and adjacent forest. Grialou *et al.* (2000) studied the abundance and demographics of salamanders, including two plethodontid species, in mesic forests in southwestern Washington. In the year following clear-cut harvesting, body sizes of western subadult and juvenile red-backed salamanders were smaller, but attained normal size distribution by the second-year post harvest. Gravid females were captured on clear-cut plots before and after harvest. Knapp *et al.* (2003) used a randomized, replicated design to quantify plethodontid salamander populations on harvested timberlands of the Appalachian Mountains in Virginia and West Virginia. While salamander abundance was less on clear-cut areas versus control areas, there were no differences between cut and uncut treatments in the proportion of gravid females or in the average number of eggs in gravid females. Moreover, there were no differences between cut and uncut treatments in the proportion of the sample that was juvenile, except in one plethodontid species, which had a higher proportion of juveniles in uncut treatments.

Because most of the aforementioned studies have been conducted on other plethodontid species in mesic environments, the Service believes that our evaluation should focus primarily on information collected from Siskiyou Mountains salamander and Scott Bar salamander populations. The petition claims that a study of habitat associations of Siskiyou Mountains salamander by Ollivier *et al.* (2001) demonstrates that the species is threatened by logging. Ollivier *et al.* (2001) conducted presence/absence surveys for salamanders at 239 random locations within the range of Siskiyou Mountains salamander (some samples were within the range of the Scott Bar salamander), and concluded that the species was strongly associated with characteristics of mature forests such as closed canopies, large tree diameters, and a mossy ground cover layer. Based on this conclusion, the petition infers that removal of forest cover would result in habitat conditions unsuitable for the salamanders. While the study design employed by Ollivier *et al.* (2001) did not compare salamander abundance pre- and post-harvest, their sample contained 42 precanopy plots (0-to-30-year-old clearcuts). Subsequent to the study by Ollivier *et al.* (2001), State and private biologists conducted numerous surveys and detected Siskiyou Mountains salamanders and Scott Bar salamanders in previously logged sites (Farber *et al.* 2001; CDFG 2005). These surveys followed no sampling design and cannot be used to infer a lack of impacts caused by logging; however, they do suggest that salamander populations persist at sites that have been logged.

After reviewing data collected by Ollivier *et al.* (2001) and sampling results obtained by the California Department of Fish and Game (CDFG), H. Welsh and D. Ashton (2004) concluded that the viability of Siskiyou Mountains salamander populations is compromised following clear-cutting.

They based this conclusion on the high proportion (64 percent) of juvenile and subadult animals in the sample obtained by CDFG in non-forested habitats, and speculated that this was an indication of a 'sink' population of dispersing individuals and low levels of reproduction. Without further research, the effects of forest canopy removal on the abundance and demographics of Siskiyou Mountains salamander and Scott Bar salamander populations following logging will remain poorly understood. Two studies examining this question are currently in progress: one involving the Service, the Redwood Sciences Laboratory, and Humboldt State University, and one being conducted by Timber Products Company.

The petition also states that gaps created in the species' range by logging could compromise the species' viability. The petition claims that the biology of the species, narrow habitat niche, naturally fragmented habitat, and patchy distribution limit the species' ability to recover from disturbances. The petition cites Blaustein *et al.* (1995) to support the claim that when local populations of Siskiyou Mountains salamander are extirpated, there is little chance that the habitat will be recolonized. However, evidence in the petition and in Service files suggests that dispersing juveniles readily colonize logged sites (Welsh 2005) and road cutbanks (Nussbaum 1974), suggesting that dispersal may not be as limited as previously thought. The biology of the Siskiyou Mountains salamander and the Scott Bar salamander may limit their ability to recolonize vacant sites; however, neither the petition nor information in our files demonstrates that logging creates gaps in plethodontid salamander distribution by extirpating species from a site.

The petition also states that other actions, including tractor logging, road construction, mining, and recreational development, have resulted in, and will continue to result in, degradation, loss, or fragmentation of Siskiyou Mountains salamander habitat. The petition cites Welsh and Ollivier (1995) as suggesting that tractor yarding may impact Siskiyou Mountains salamander habitat by compacting, breaking, or realigning talus. Although it is reasonable to conclude that tractor yarding may disturb talus substrates, field studies have not demonstrated how this impacts salamander populations. The petition also cites deMaynadier and Hunter (2000) as indicating that plethodontid salamanders are sensitive to population fragmentation by logging roads. Results of that study suggest that logging roads may significantly inhibit movement and local abundance of plethodontid salamanders. Additional information in our files (Marsh *et al.* 2005) suggests that forest roads act as partial barriers to salamander movement. Road densities within much of the ranges of the Siskiyou Mountains salamander and Scott Bar salamander are documented to be high (USDA 1999) and may act to reduce dispersal and increase the degree of isolation among salamander populations. This in turn may lead to reduced gene flow and reduced long-term persistence of small, isolated populations (Marsh *et al.* 2005). Conversely, Nussbaum (1974) found that road cuts provided essential habitat in the form of newly exposed fissured rock and were colonized by Siskiyou Mountains salamanders soon after road construction. The available information regarding the effects of roads on populations of Siskiyou Mountains salamanders and Scott Bar salamanders is equivocal.

Although the amount of habitat impacted by logging could not be quantified, the petition contends that substantial habitat loss has likely occurred. To support this claim, the petition cites the USDA, USDI Species Review Panel (2001), which stated that ''cumulative effects from past timber harvest have impacted populations on Federal lands'' and ''from 1980 to 1990, 10 percent of habitat on the Applegate Ranger District was clearcut.'' However, the rate and extent of timber harvest has declined dramatically on Federal lands within the Northwest Forest Plan area during the past 30 years (USDA, USDI 2005), particularly on the Klamath National Forest, which comprises roughly 50 percent of the Siskiyou Mountain salamander's range and 80 percent of the Scott Bar salamander's range (USDA 2006). During the 6-year period from 2000 to 2005, the Klamath National Forest sold and removed an average of 15.9 million board feet of timber annually, compared with 187.8 million board feet/per year during 1985 to 1990 (inclusive), and 238.2 million board feet/per year from 1979 to 1984 (USDA 2006). The declining trend in timber harvest reduces the likelihood that a high proportion of the salamanders' populations will be impacted by logging.

While the Service agrees that timber harvesting has the potential to reduce habitat quality for the Siskiyou Mountains salamander and Scott Bar salamander, Forest Service reports (USDA, USDI 2005; USDA 2006) demonstrate a dramatic decline in the amount of timber harvest on Federal lands within the ranges of the salamanders. These data suggest that the rate and magnitude of harvest on the majority of the species' ranges is likely not sufficient to cause them to be threatened or endangered in the foreseeable future.

The petition further claims that fire suppression has led to an increase in fuel loading, resulting in a change from low- to high-intensity fire regimes in many forest stands within the ranges of the Siskiyou Mountains salamander and Scott Bar salamander, and that the risk of stand-replacing fire has increased due to forest management practices that remove the largest, most fire resistant trees and create young, highly combustible plantations. The petition claims that although the response of these salamanders to fire has not been well studied, fire has the potential to impact populations by removing or reducing forest canopy cover. Published studies (Agee 1993; Taylor and Skinner 1998) and Forest Service reports (USDA 1999) clearly document that increased fuel loading and forest stand density have increased the potential for high-intensity wildfire events within the range of the Siskiyou Mountains salamander and Scott Bar salamander. These high-intensity fires were much less frequent in the historical fire regime with which these salamanders evolved. High-intensity wildfire events, by definition, remove or significantly reduce forest cover; consume moss, duff, and forest litter; and may sterilize surface soil layers. The impacts of such events on salamander habitat and populations are likely more severe than those of clear-cutting, but have not been directly evaluated. Recent large fires within the Klamath Province, combined with fire behavior modeling conducted by the Forest Service, suggest a high probability of moderate-to high-intensity wildfires within the range of the Siskiyou Mountains salamander and Scott Bar salamander. However, fire modeling also suggests that the level of tree mortality would be highly variable within the range of these species (USDA 1999), resulting in a mosaic pattern of habitat effects. The extent to which high-intensity fire effects would occur within habitats occupied by these salamanders is currently unknown.

To summarize Factor A, logging, wildfire, and other habitat disturbances may impact local abundance and viability of Siskiyou Mountains salamanders and Scott Bar salamanders by altering the microclimate within stands that support these species, by fragmenting habitat, or by otherwise reducing habitat quality. Although extensive logging has occurred in

Siskiyou Mountains salamander and Scott Bar salamander habitat for over 100 years, the extent of habitat change has not been quantified, and salamander populations remain well-distributed. Increased potential for stand-replacing wildfire also places more of the species' habitat at risk. Information in our files (e.g., Farber *et al.* 2001; CDFG 2005) indicates that both Siskiyou Mountains salamanders and Scott Bar salamanders occur to some extent in clear-cuts, second-growth stands, burned areas, and naturally open habitats, and the demography of populations subjected to timber harvest or fire is poorly known. This evidence suggests that while timber harvest and wildfire may, at least temporally, reduce habitat quality for, and abundance of, Siskiyou Mountains salamanders and Scott Bar salamanders, they do not result in the extirpation of populations. The rate and extent of timber harvest has declined dramatically on Federal lands within the Northwest Forest Plan area, particularly the salamanders' ranges on the Klamath National Forest, during the past 30 years (USDA, USDI 2005; USDA 2006). Based on current Forest Service policies, we anticipate that the rate of timber harvest will remain at roughly the present levels. Although it is reasonable to assume that high-intensity wildfire may have a negative impact on salamander habitat and populations, we are not aware of any scientific studies that evaluate this potential risk, and there is evidence that salamander populations persist following reduction of forest canopy.

In general, the Service finds that reliable scientific information presented in the petition and available in our files regarding the dependence of the Siskiyou Mountains and Scott Bar salamanders on old growth forest habitat and habitat-based threats to the species posed by logging and high-intensity fires is equivocal and conflicting. However, based on the standard applicable to 90-day findings under the Act, we find that the petition does present substantial information regarding Factor A, indicating that listing of these two species across all or a significant portion of their ranges may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information pertaining to Factor B. Therefore, we find that the petition does not present substantial information indicating that listing of these two species across all or a significant portion of their ranges may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petition does not present any information pertaining to Factor C. Therefore, we find that the petition does not present substantial information indicating that listing of these two species across all or a significant portion of their ranges may be warranted due to disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

The petition asserts that existing regulatory mechanisms are inadequate to protect Siskiyou Mountains and Scott Bar salamanders because Federal regulatory mechanisms that formerly protected the salamanders have been eliminated and State regulatory mechanisms that protect the species are likely to be eliminated. The petition does not contend that, if left in place, the Federal and State mechanisms would be inadequate to protect the species.

Federal Lands

The petition cites the USDA, USDI Species Review Panel (2001) to demonstrate that approximately 80 percent of the range of the Siskiyou Mountains salamander occurs on Federal lands managed by the Rogue-Siskiyou and Klamath National Forests and the Medford District of the Bureau of Land Management. Thirty-nine percent of the species' range occurs within protected land designations under the Northwest Forest Plan (NWFP) (USDA, USDI Species Review Panel 2001). Additionally, the petition cites Clayton *et al.* (2002 as cited in USDA, USDI 2004) to demonstrate that less than 10 percent of suspected high-quality habitat occurs in reserves. The petition thus concludes that the majority of the species' ranges and high-quality habitat occurs on Federal lands available for timber harvest and other activities. The petition cites the USDA, USDI Species Review Panel (2001) to suggest that specific protections on non-reserve land allocations will likely be required to ensure persistence of the species.

The petition claims that the Siskiyou Mountains salamander formerly received substantial protection on Federal lands from the Survey and Manage Program (USDA, USDI 1994). The petition claims that this program was abolished with the Record of Decision (ROD) entitled, ''To Remove or Modify the Survey and Manage Mitigation Measures Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl'' in March 2004 (March 2004 ROD). The Final Supplemental Environmental Impact Statement for the March 2004 ROD addressed potential mitigation, including sensitive species programs, for species affected by the removal of the Survey and Manage Program. However, the petition claims that the sensitive species programs provide substantially less protection by failing to require surveys and making mitigation optional. The petition cites a USDA, USDI (2004) statement that the elimination of the Survey and Manage Program may result in gaps in the Siskiyou Mountains salamander's range.

According to the petition, in the absence of the Survey and Manage Program, management of the Siskiyou Mountains salamander would be governed by the standards and guidelines of the NWFP. According to the petition, 78 percent of the known occupied sites north of the Siskiyou Crest occur in the Applegate Adaptive Management Area (AMA). Under the NWFP, AMAs were created to ''encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and other social objectives,'' with each AMA having a management plan (USDA, USDI 1994). Because an agency plan for the Applegate AMA has not been produced, and standards and guidelines for activities in AMAs are more flexible than in other land-use allocations, the petition claims that existing guidelines for the Siskiyou Mountains salamander in the Applegate AMA would result in limited protection for the species. However, the petitioners provided no documentation to suggest that Federal actions in the AMA are having an effect on the salamanders.

The status of the Survey and Manage Program is in flux. In January 2006, the United States District Court, Western District of Washington in *Northwest Ecosystem Alliance, et al.*, v. *Mark E. Rey, et al.*, Case 2:04–CV–00844–MJP, ordered the March 2004 ROD set aside for failure to comply with the National Environmental Policy Act (42 U.S.C. 4321 et seq.). With this, the court reinstated the 2001 Survey and Manage ROD as it stood in March 2004. The Survey and Manage Program is therefore the current regulatory mechanism in place for the United States Forest Service and Bureau of Land Management lands that the Siskiyou

Mountains salamander occupies. Under these provisions, all currently known and future sites south of the Siskiyou Crest will be managed to maintain species persistence, and surveys will be conducted prior to habitat-disturbing activities. North of the Siskiyou Crest, high-priority sites will be identified and managed to provide a reasonable assurance of species persistence.

The Scott Bar salamander is not specifically addressed by name in the Survey and Manage ROD protections. However, the Klamath National Forest has formally stated that Survey and Manage protections for Siskiyou Mountains salamander also extend to the Scott Bar salamander, as they cannot be easily distinguished in the field (M. Boland 2006). Thus, protections for the Scott Bar salamander on Federal lands are in place.

The Forest Service and Bureau of Land Management have stated that they intend to issue on June 8, 2007, a final supplement to the 2004 Final Supplemental Environmental Impact Statement that addresses the deficiencies of the March 2004 ROD that were identified by the court. Implementation of the final supplement is anticipated during August 2007. The Service cannot predict what protections will be provided to the Siskiyou Mountains salamander in future decisions. If existing Federal regulations are modified in the future, the adequacy of these regulations to protect the Siskiyou Mountains salamander and Scott Bar salamander in light of any threats to the species threats should be evaluated at that time.

State Regulations

The State of Oregon provides no regulatory protections for the Siskiyou Mountains salamander on private lands (approximately 10 percent of the species' range). In California, the Siskiyou Mountains salamander is listed as a threatened species and receives substantial protection under the California Endangered Species Act (CESA). These protections include pre-project surveys and prohibitions on timber harvest in established buffers around suitable habitat. In 2005, CDFG submitted a petition to the California Fish and Game Commission to delist the Siskiyou Mountains salamander. Because of CDFG's delisting proposal, the petitioners claim that the protections provided by CESA should not be considered to provide firm regulatory protection for the species. The final determination on whether to delist the Siskiyou Mountains salamander was scheduled to be made at the Fish and Game Commission's January 31, 2007, meeting; however, that determination has been postponed until Fall of 2007. If existing State regulations are modified in the future, the adequacy of the future regulations to protect the Siskiyou Mountains salamander in light of any threats to the species should be evaluated at that time. Unless and until the Siskiyou Mountains salamander is delisted as a threatened species, it remains protected under the CESA.

In July 2005, the Scott Bar salamander appeared on the CDFG's Special Animals List (CDFG 2006). The CDFG describes the Scott Bar salamander as a ''newly discovered species from what was part of the range of *Plethodon stormi*.'' Based on this change of taxonomic status, the CDFG removed the Siskiyou Mountains salamander populations now recognized as Scott Bar salamanders from listed status under CESA. That action was successfully challenged by three environmental organizations in State court (*Environmental Protection Information Center et al.* vs. *California Department of Fish and Game*, Case No. CPF–06–506585). The court found that the removal of Scott Bar salamander from the State's endangered species list was not in accordance with law, and ordered that the new species be protected under CESA until formal delisting procedures are completed. On May 1, 2006, the California Fish and Game Commission received a petition to list the Scott Bar salamander under CESA.

No specific regulatory mechanisms to protect the Siskiyou Mountains salamander exist on the approximately 10 percent of the species' range that occurs in Oregon. However, research suggests that populations of these salamanders persist following timber harvest (Farber *et al.* 2001; Clayton *et al.* 2004; CDFG 2005). Therefore, the Service believes that the lack of regulatory protections on a limited proportion of the species' ranges does not likely pose a threat to the species as a whole in the foreseeable future.

To summarize Factor D, existing Federal regulations currently provide substantial protection on Federal lands for the Siskiyou Mountains salamander and Scott Bar salamander through the Survey and Manage Program.

Current California regulations provide substantial protection for the Siskiyou Mountains salamander and Scott Bar salamander on private lands. Oregon provides no regulatory protections for Siskiyou Mountains salamanders on private lands. However, private lands in Oregon comprise only 10 percent of the Siskiyou Mountains salamander's range. The Scott Bar salamander's range does not extend into Oregon. Thus, substantial regulatory protections are provided to both species across a large majority of the Siskiyou Mountains salamander's range and all of the Scott Bar salamander's range. Although the Forest Service and Bureau of Land Management have developed a supplement to their March 2004 Supplemental Environmental Impact Statement (SEIS) that again proposes to eliminate Survey and Manage guidelines for the Siskiyou Mountains salamander, no decision has been made by the agencies. Similarly, the State of California is currently evaluating a petition to delist the Siskiyou Mountains salamander, but no decision regarding this action has been reached. Continuing litigation over the Federal and State proposals and re-evaluation of the proposals by Federal and State agencies indicates that a future relaxation of regulatory mechanisms to protect the Siskiyou Mountains and Scott Bar salamanders is at best uncertain. Under section 4(a)(1)(D) of the Act, the Service must evaluate the adequacy of existing regulatory mechanisms rather than speculate about future changes to those mechanisms. If these regulations are modified or eliminated in the future, the Service will consider that information when evaluating the adequacy of then existing regulatory mechanisms to protect the Siskiyou Mountains salamander and the Scott Bar salamander, in light of any threats faced by the species. In particular, we will monitor any changes to Federal and State regulatory mechanisms during our status review of the species.

Because Federal and State of California regulations are currently in effect and offer protection for the Siskiyou Mountains salamander and Scott Bar salamander over all or the vast majority of the species' ranges, we find that the petition does not present substantial information that listing of these two species across all or a significant portion of their ranges may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition states that ''an increasing consensus has developed that we are and will continue to experience global warming.'' The petition cites Feder (1983) and Ollivier *et al.* (2001) to propose that the salamanders' unique physiology and their need for moist conditions for foraging and breeding activity make the Siskiyou Mountains

salamander and Scott Bar salamander particularly sensitive to variations in climate. Thus, the petition suggests that the expected change in climate over time is likely to influence the species' distribution and ability to find suitable habitat. The petition also claims that warmer temperatures may shorten the window in which the species is able to forage and reproduce. According to the petition, warmer temperatures may also negatively affect habitat by increasing the severity and intensity of forest fires, resulting in loss of forest canopy. However, the petition did not present an analysis of the likelihood or magnitude of microhabitat changes that may be brought about by regional climate change.

The petition also cites USDA, USDI (2004) to demonstrate that, due to limited habitat and the known existence of only three localities, the Scott Bar salamander is at risk of extinction due to genetic or demographic stochasticity, regardless of management direction. However, information in our files suggests that the number of known localities and existing habitat within the range of the Scott Bar salamander is considerably larger than that considered in USDA, USDI (2004), and there is no evidence to suggest the historical range of the Scott Bar salamander has significantly contracted despite 100 years of extensive logging, which has substantially decreased in recent years. The apparent resiliency of this species and the existence of 37 currently known sites decreases the potential threat posed by stochastic events, although the species' range is naturally small and restricted. The Siskiyou Mountains salamander also continues to be distributed across its historic range despite widespread logging during the 20th century. Stochastic events pose even less of a potential threat to the Siskiyou Mountains salamander due to its apparent resiliency and the greater number of known localities and relatively larger range.

To summarize Factor E, because foraging and breeding activities are dependent upon cool, moist conditions, these salamanders may be susceptible to alterations in microclimate resulting from projected climate change. However, the petition does not present reliable evidence of, or analyze the type, magnitude, or temporal effects of, microhabitat changes within the ranges of the Siskiyou Mountains and Scott Bar salamanders that could potentially be brought about by future regional climate change. Finally, the petitioners assert that the Siskiyou Mountains and Scott Bar salamanders are at risk because their restricted ranges make the species vulnerable to extinction as a result of stochastic events. Although the ranges of the species are naturally restricted, they have continued to persist despite decades of logging, and the number of currently known populations is considerably greater than stated in the petition. Additionally, a considerable amount of suitable habitat capable of supporting Siskiyou Mountains salamanders and Scott Bar salamanders has yet to be surveyed. Thus, the Service believes that both the Siskiyou Mountains and Scott Bar salamanders are more resilient to stochastic events than the petition claims. We find that the petition does not present substantial information that listing of the two species across all or a significant portion of their ranges may be warranted due to natural or manmade factors affecting their continued existence.

Distinct Population Segments and Significant Portion of Range

The petition asserts that the Siskiyou Mountains salamander occurs in three separate distinct population segments (DPSs) and also requests the Service to consider listing the Siskiyou Mountains salamander throughout a significant portion of its range.

Because we conclude that the petition provides substantial information that listing the Siskiyou Mountains and Scott Bar salamanders rangewide may be warranted (thus triggering the requirement under the Act that we conduct a status review), we have not analyzed in detail whether the petition also provides substantial information with respect to a particular significant portion of the range of the Siskiyou Mountains salamander. For the same reason, we have not analyzed in detail whether the petition provides substantial information with regard to potential distinct population segments of the Siskiyou Mountains salamander other than the petitioner's proposed Scott Bar salamander DPS, which we have treated as a separate species for purposes of this finding. However, we welcome information on the issue of whether either salamander is, in fact, in danger of extinction throughout all or a significant portion of its range, or likely to become so in the foreseeable future, and information on the issue of whether a particular DPS of the Siskiyou Mountains salamander warrants listing. We will consider these issues further during the status review, particularly if we conclude that the species are not in danger of extinction rangewide, nor likely to become so in the foreseeable future.

Finding

The Service finds that the information provided in the petition and readily available in our files regarding habitat associations of Siskiyou Mountains and Scott Bar salamanders and the potential for population losses due to logging and fire is equivocal and conflicting. Therefore, based on the standard applicable to 90-day findings under the Act, we must find that the petition does present substantial information that listing of the two species across all or a portion of their ranges *may* be warranted based on the threatened destruction, modification, or curtailment of their habitat and ranges. This finding initiates a status review of these species so that we can gather more scientific data on these and other relevant issues concerning these species.

The petition also requested that critical habitat be designated for the Siskiyou Mountains salamander and Scott Bar salamander. If we determine in our 12-month finding that listing these species is warranted, we will address the designation of critical habitat in the proposed listing rule or as funding allows.

References Cited

A complete list of all references cited herein is available, upon request, from the Yreka Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff of the Yreka Fish and Wildlife 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: March 22, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–5774 Filed 3–28–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU53

Endangered and Threatened Wildlife and Plants; Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period; notice of a public hearing.

SUMMARY: Under the Endangered Species Act (Act), we, the U.S. Fish and Wildlife Service (Service), announce an extension of the comment period for the proposed rule to establish a distinct population segment (DPS) of the gray wolf (*Canis lupus*) in the Northern Rocky Mountains (NRM) of the United States and to remove the gray wolf in the NRM DPS from the List of Endangered and Threatened Wildlife (List) under the Act. We also announce the location and time of one additional public hearing to receive public comments on this proposal. If you previously submitted comments, please do not resubmit them because we have already incorporated them into the public record and will fully consider them in our final decision and rule.

DATES: The public comment period is extended until May 9, 2007. We may not consider any comments we receive after the closing date. We will hold a public hearing on April 19, 2007. For more information, see ''Public Hearing and Comments.''

ADDRESSES: If you wish to comment, you may submit comments and materials concerning this proposal, identified by ''RIN number 1018–AU53,'' by any one of the following methods:

1. *Federal e-Rulemaking Portal—http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail—WesternGrayWolf@fws.gov.* Include ''RIN number 1018–AU53'' in the subject line of the message.

3. *Fax*—(406) 449–5339.

4. U.S. mail, hand delivery, or courier—U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601.

Comments and materials we receive, as well as supporting documentation we used in preparation of this proposed action, will be available for inspection following the close of the comment period, by appointment, during normal business hours, at our Helena office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449–5225, extension 204. Persons who use a Telecommunications Device for the Deaf may call the Federal Information Relay Service at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2007, we published a proposal to establish a DPS of the wolf (*Canis lupus*) in the NRM of the United States and to remove the NRM DPS from the List (71 FR 6106). The comment period on this proposal opened February 8, 2007, and extends to April 9, 2007. Due to the complexity of this proposed action, we are extending the comment period for 30 days to allow the public ample opportunity to comment on this complex proposal.

Public Hearing and Comments

One additional open house, from 3 p.m. to 5 p.m. (brief presentations about the proposed rule will be given at both 3 p.m. and 4 p.m.), and one additional public hearing, from 6 p.m. to 8 p.m., will be held on:

April 19, 2007, Thursday, at the Cody Auditorium Facility, 1240 Beck Avenue, Cody, WY 82414.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up only at the open houses and hearings. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact Sharon Rose (303) 236–4580. If you need reasonable accommodations in order to attend and participate in the public hearing, please contact Sharon Rose at (303) 236–4580 as soon as possible in order to allow sufficient time to process requests. Please call no later than 1 week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

The purpose of the public hearing is to provide additional opportunity for the public to comment on this complex proposal. Public hearings are the only method for comments and data to be presented verbally for entry into the public record of this rulemaking and for our consideration during our final decision. Comments and data also can be submitted in writing or electronically, as described in our February 8, 2007, proposal (71 FR 6106) and in the **ADDRESSES** section above.

We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We solicit information, data, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposal. Generally, we seek information, data, and comments concerning the boundaries of the proposed NRM DPS and the status of gray wolf in the NRM. Specifically, we seek documented, biological data on the status and management of the NRM wolf population and its habitat.

Submit comments as indicated under **ADDRESSES**. If you wish to submit comments by e-mail, please include your name and return address in your e-mail message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will take into consideration the comments and any additional information received during the comment period on this proposed rule during our preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 23, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–5744 Filed 3–28–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070226045–7045–01; I.D. 020107A]

RIN 0648–AT55

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; Management Measures for Bigeye Tuna Pacific-wide and Yellowfin Tuna in the Western and Central Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement Amendment 14 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The amendment responds to the Secretary of Commerce's determination that overfishing is occurring on bigeye tuna (*Thunnus obesus*) Pacific-wide, and on yellowfin tuna (*Thunnus albacares*) in the western and central Pacific Ocean (WCPO). The measures in the amendment are designed to end overfishing of bigeye tuna Pacific-wide and yellowfin tuna in the WCPO, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 14 would establish Federal permitting and reporting requirements for all U.S. Hawaii-based small boat commercial pelagic fishermen. Internationally, Amendment 14 would establish for the Western Pacific Fishery Management Council (Council) an internal protocol related to its role in making recommendations to the Secretary on the management of pelagic fish stocks that are managed internationally, including its participation in U.S. delegations to meetings of regional fishery management organizations (RFMOs). This amendment also recommends that NMFS and the Department of State work through the RFMOs to immediately end overfishing of bigeye tuna Pacific-wide and WCPO yellowfin tuna, focusing on fisheries with the greatest impact on Pacific bigeye tuna and WCPO yellowfin tuna, i.e., longline and purse seine fisheries.

DATES: Comments on the proposed rule must be received by May 14, 2007.

ADDRESSES: You may submit comments on the proposed rule, identified by *AT55Tuna*, to any of the following addresses:

- E-mail: *AT55Tuna@noaa.gov*. Include in the subject line the following document identifier AT55Tuna. Comments sent via email, including all attachments, must not exceed a file size of 10 megabytes.
- Federal e-Rulemaking portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail or Hand Delivery: William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

An Environmental Assessment (EA) was prepared for this amendment. Copies of the Pelagics FMP and Amendment 14 (containing the EA) may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson (see **ADDRESSES**), or by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION: On December 15, 2004, NMFS notified the Western Pacific and Pacific Fishery Management Councils that overfishing was occurring on bigeye tuna Pacific-wide (69 FR 78397, December 30, 2004). On March 16, 2006, NMFS notified the Western Pacific Council that overfishing was occurring on western and central Pacific Ocean (WCPO) yellowfin tuna (71 FR 14837, March 24, 2006). As required by the Magnuson-Stevens Act, the Councils were requested to take appropriate action to end overfishing. Pelagics FMP Amendment 14 contains the Western Pacific Council's recommended actions to end overfishing for both stocks.

According to the guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310), fishery stock status is assessed with respect to two status determination criteria, one of which is used to determine whether a stock is ''overfished,'' and the second of which is used to determine if the stock is subject to ''overfishing.'' A stock is considered to be overfished if its biomass falls below the minimum stock size threshold (MSST). Overfishing means that fishing is occurring at a rate or level that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield (MSY) on a continuing basis. When a stock is not in an overfished condition, the maximum fishing mortality threshold (MFMT) is equal to the fishing mortality associated with MSY (F_{MSY}). The latest stock assessments for bigeye tuna in the Pacific and WCPO yellowfin tuna have concluded that the biomass of neither stock is below their respective MSST. However, the assessments used as a basis for the overfishing determinations (conducted in 2003 and 2004 for Pacific bigeye tuna and 2005 and 2006 for WCPO yellowfin tuna) indicated that the then-current level of fishing mortality did exceed the stocks' respective MFMTs. Consequently, NMFS determined that overfishing was occurring on the Pacific-wide stock of bigeye tuna and on the WCPO stock of yellowfin tuna.

Bigeye and yellowfin tuna are highly migratory species, and occur in the waters of multiple nations and the high seas. Consequently, they are targeted by fishing fleets of several nations, including the United States of America (U.S.A.). Until recently, the majority of bigeye tuna in the Pacific Ocean was caught by longliners, primarily for the Japanese sashimi market. During the last 10 years, however, catches of bigeye tuna by purse seiners have increased considerably. Purse seine-caught bigeye tuna are taken primarily when purse seiners targeting skipjack and yellowfin tuna set their nets around fish aggregating devices (FADs). Smaller amounts are also taken by handline and troll vessels. Yellowfin tuna in the WCPO are caught primarily by purse seiners. WCPO longline, pole-and-line, handline and troll fisheries also catch substantial amounts of yellowfin tuna.

In 2004, estimated bigeye tuna catches by U.S. commercial fisheries under the Council's authority amounted to 5,163 mt, or 2.3 percent of the 2004 total Pacific-wide bigeye tuna catch. In 2004, estimated yellowfin tuna catches by U.S. commercial fisheries under the Council's authority amounted to 2,383 mt, or about 0.35 percent of the 2004 total Pacific-wide yellowfin tuna catch, and 0.58 percent of the yellowfin tuna caught in the WCPO. These figures indicate that the capacity for unilateral action by the U.S.A. to prevent or end overfishing is limited, as is the capacity

for any action taken by the Council to end overfishing on these fish stocks.

In response to concerns about the condition of the bigeye tuna stock in the Eastern Pacific Ocean, the Inter-American Tropical Tuna Commission (IATTC) adopted management measures, commencing with temporal closures of purse-seine fishing and bigeye tuna catch limits for longline vessels. Within the area of competence of the IATTC, the longline fleets of China, Japan, Korea, and Chinese Taipei were allocated specific catch limits. Other member nations of the IATTC were allocated bigeye tuna catch limits equivalent to their respective 2001 catches. The U.S. longline fleet-wide bigeye tuna limit was set at 150 mt, although this quota will increase to 500 mt in 2007. (The IATTC's June 2006 resolution allows for a quota of 500 mt, and the U.S. implementing regulations are still being reviewed for implementation in the near future.)

The U.S.A. is a Cooperating Non-member of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). (Although the implementing legislation for U.S. membership in the WCPFC has been signed, the U.S.A. has not formally ratified the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) or become a member of the Commission.) The WCPFC, established under the Convention, adopted conservation and management measures for WCPO yellowfin tuna and WCPO bigeye tuna in 2005 and 2006. The measures include national limits on bigeye tuna catches by longline fisheries in the Convention area (which overlaps with the area of competence of the IATTC), based on such members' average 2001–04 catches, or for China and the U.S.A., based on their 2004 catches. These limits will remain in effect through 2008. WCPFC cooperating non-members, and participating territories (together abbreviated as CCMs) that caught less than 2,000 mt by longlines in 2004, may take up to 2,000 mt each year from 2006–08.

For yellowfin tuna, for which the main source of fishing mortality in the WCPO is purse seine fishing, the WCPFC established measures for purse seiners within the Convention Area (in the area between 20° N and 20° S latitude). Starting in 2006, CCMs are required to take necessary measures to ensure purse seine effort levels do not exceed either 2004 levels, or the average of 2001 to 2004 levels, in waters under their national jurisdiction. Starting in 2007, CCMs must limit effort on the high seas by their purse seine vessels to those same baseline levels. Also beginning n 2007, CCMs must limit the fishing capacity of their fisheries other than longline and tropical purse seine fisheries to the same baseline levels. The adopted measures also require CCMs to develop management plans for the use of FADs in waters under national jurisdiction and on the high seas.

The 2004 overfishing determination for Pacific-wide bigeye tuna relied on assessments from two approaches: one assuming a single Pacific-wide stock (assessment completed in July 2003), and the other assuming two stocks, one in the WCPO, corresponding to the area of competence of the WCPFC (assessment completed in July 2004), and the other in the eastern Pacific Ocean (EPO), corresponding to the area of competence of the IATTC (assessment completed in May 2004). The overfishing determinations relied on assessment results from each of these approaches, but did not rely on any assumptions or conclusions about stock structure. The July 2004 assessment for the WCPO stock indicated a probability of at least 67 percent that the recent fishing mortality rate exceeded the fishing mortality rate associated with MSY, known as the Maximum Fishing Mortality Threshold (MFMT). The May 2004 assessment for the EPO stock indicated that in all scenarios considered, the recent fishing mortality rate exceeded the MFMT. The results of the 2003 assessment for the Pacific-wide stock were similar in that the recent fishing mortality rate exceeded the MFMT. The results from the 2003 and 2004 assessments showed that the level of fishing mortality $F_{current}$ was at or above the fishing mortality at MSY (F_{MSY}), i.e., $F_{current}/F_{MSY}$ = 0.90–1.30 for bigeye tuna Pacific-wide. The latest assessment for bigeye tuna in the WCPO estimated, in the base case model, that $F_{current}/F_{MSY}$ = 1.32 ($F_{current}$ was taken to be the 2001–04 average fishing mortality-at-age). The probability of $F_{current}$ being greater than F_{MSY} was estimated to be 100 percent. The Pacific-wide stock was found not to be overfished, but could become so if levels of fishing mortality are not reduced.

In 2005, the Scientific Committee of the WCPFC reviewed a stock assessment for the WCPO stock of yellowfin tuna that indicated that the stock was likely subject to overfishing. The then-current rate of fishing mortality $F_{current}$ was found to be likely in excess of the MFMT, with an $F_{current}/F_{MSY}$ = 1.0 – 2.33. The latest assessment for yellowfin tuna in the WCPO, conducted in 2006 estimated, in the base case model, that $F_{current}/F_{MSY}$ = 1.11 ($F_{current}$ was taken to be the 2001–04 average fishing mortality-at-age). The probability of $F_{current}$ being greater than F_{MSY} was estimated to be 73 percent. The WCPO stock was found not to be overfished, but could become so if levels of fishing mortality are not reduced.

Because bigeye and yellowfin tuna are taken by handline and troll vessels, Pelagics FMP Amendment 14 contains measures to assess the impact of small boat fisheries in Hawaii on these species, as well as other pelagic fishes, in the WCPO. Specifically, the Council recommended that NMFS enhance the data collection for U.S. Hawaii-based small boat fishing through mandatory Federal permits and data-collection programs (logbooks) for commercial pelagic fisheries, and improved surveys and voluntary reporting for recreational pelagic fisheries.

Pelagics FMP Amendment 14 acknowledges that the Council recommended a control date of June 2, 2005, for entry into the small boat commercial pelagic fisheries in U.S. EEZ waters around Hawaii. On August 15, 2005, NMFS published a notice of this control date (70 FR 47781). The amendment also acknowledges that the Council recommended a control date of June 2, 2005, for entry into domestic longline and purse seine fisheries in U.S. EEZ waters in the western Pacific. On August 15, 2005, NMFS published a notice of this control date (70 FR 47782). These control dates were implemented to notify the public that future participation in these fisheries was not guaranteed if the Council and NMFS developed and implemented limited access programs for the fisheries. Establishment of these control dates does not, however, commit the Council or NMFS to any particular management regime or criteria for entry into these fisheries.

The international scope of the overfishing situation for bigeye tuna Pacific-wide and WCPO yellowfin tuna indicates that measures to meaningfully address the problem must be addressed through international institutions. Unilateral management action for Council-managed pelagic fisheries could help reduce the fishing mortality, but would be insufficient to end overfishing. Thus, international measures are a fundamental component of FMP Amendment 14 to end overfishing on these tuna stocks.

Internationally, Pelagics FMP Amendment 14 contains several proposed non-regulatory measures and recommendations, including the

establishment for the Council of an internal protocol related to its role in making recommendations to the Secretary on the management of pelagic fish stocks that are managed internationally (including steps the Council would take to monitor the status of internationally managed fish stocks, participate in U.S. delegations in meetings with RFMOs, and follow the activities of RFMOs). The Council also recommends that NMFS and the Department of State work through the RFMOs to immediately end overfishing of bigeye tuna Pacific-wide and WCPO yellowfin tuna, focusing on fisheries with the greatest impact on Pacific bigeye tuna and WCPO yellowfin tuna, i.e., longline and purse seine fisheries. Specific international recommendations include plans for reducing longline fishing capacity, reducing purse seine fishing capacity and restrictions on the use of FADs while purse seine fishing, establishment and gradual reduction of national quotas, and other measures.

This proposed rule is consistent with section 406 of the Magnuson-Stevens Reauthorization Act (MSRA, Public Law 109–479), which added a new subsection 304(i) to the MSA. Section 304(i) requires the Secretary to, among other things, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end overfishing for fisheries that the Secretary has determined (a) to be overfished or approaching a condition of being overfished due to excessive international fishing pressure, and (b) for which there are no management measures to end overfishing under an international agreement to which the United States is a party. NMFS has made a determination that both of these conditions are present, and these measures are, therefore, proposed pursuant to subsection 304(i).

This proposed rule recognizes that Pacific bigeye tuna and WCPO yellowfin tuna are exploited in waters under US jurisdiction, waters under the jurisdiction of other nations, and on the high seas by foreign fishing fleets along with the U.S. fleet. U.S. fisheries account for only a small percentage of the Pacific bigeye and WCPO yellowfin tuna harvests. Thus, fishing mortality of these tuna stocks stems predominantly from non-U.S. fleets in the region, and any unilateral management action to end overfishing by the U.S.A. would have a proportionally small effect in terms of reducing fishing mortality and ending overfishing. The Council has developed recommendations in Amendment 14 for domestic regulations to address the relative impact of U.S. fishing vessels on the affected stocks. Also in Amendment 14, the Council proposes to recommend, to NMFS and the Secretary of State, international actions to end overfishing in the fisheries. NMFS, in collaboration with the Councils and State Department, is working to end overfishing through the international bodies governing the conservation and management of Pacific bigeye and WCPO yellowfin tunas.

Existing Pelagics FMP measures for bigeye Pacific-wide and WCPO yellowfin tuna have been implemented to address the relative impact of U.S. fishing vessels within the meaning of MSA Section 304(i)(2)(A). These measures include limited access programs, mandatory data collection, scientific observers, vessel size limits and gear specifications, and a vessel monitoring system. The additional domestic measures, proposed in this rule, would establish permit and reporting requirements for Hawaii-based small-boat pelagic fisheries to improve the quantity and quality of information on the harvest of Pacific bigeye and WCPO yellowfin tunas.

Bigeye tuna is also a management unit species under the Pacific Fishery Management Council's Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The Pacific Council has worked with the Western Pacific Council to develop a response to the determination of overfishing on bigeye tuna Pacific-wide. Amendment 1 to the Pacific Council's HMS FMP is consistent with relevant elements of Pelagics FMP Amendment 14 to end overfishing of bigeye tuna.

Comments on this proposed rule must be received by May 14, 2007. Public comment is specifically sought regarding the proposed Federal data collection requirements for small boat commercial pelagic fishermen in Hawaii, including the necessity of, and possible alternative means for, the proposed data collection program in light of existing programs collecting data for the same fisheries. To be considered, comments must be received by close of business on May 14, 2007, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 14 through April 16, 2007 (as stated in the Notice of Availability published on February 15, 2007, 72 FR 7385). Public comments on this proposed rule, if received by April 16, 2007, will also be considered in the approval/disapproval decision for Amendment 14. Comments received after that date will not be considered in the approval/disapproval decision for Amendment 14, but will be considered for this proposed rule.

Classification

At this time, NMFS has not determined that Pelagics FMP Amendment 14, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The statutory basis for this rule is the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The objective of this rulemaking is to address overfishing of Pacific bigeye tuna, and yellowfin tunas in the WCPO by improving databases required for more accurate assessments. The rule will directly impact 1,646 vessels comprising the entire Hawaii-based commercial pelagic small boat fisheries. Therefore, a substantial number (100 percent) of the affected universe of small entities will be impacted by this rulemaking. The fishery includes troll, handline, offshore handline, and pole-and-line vessels. All vessels participating in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of $ 4.0 million). Therefore, there are no disproportionate impacts between small and large entities under this rule. In addition, there are no disproportionate economic impacts among vessels by gear, geographic area fished or home-ported, or vessel characteristics resulting from this rulemaking. The analysis of economic impacts relies on changes in net revenue as a proxy for profitability. Each permit is anticipated to cost approximately $80 annually in the form of an administrative fee representing from 2% to less than 1% of annual per vessel revenues by gear type. Expected economic costs per vessel resulting from implementation of this rule is $107, including opportunity cost ($25 per hour x 1.09 hours) reflecting the individual annual burden hours of filling out and submitting the logbook. Using an average annual revenue per vessel of $5,496, the cost to the vessel would be approximately 1.75% of annual revenue. Based on this small relative decrease in net revenues resulting from this rulemaking, NMFS has concluded that this action will not have a significant economic impact on a substantial number of small

entities for the purposes of the Regulatory Flexibility Act. Based on this determination, no initial regulatory flexibility analysis has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 30 min for a new permit application, and 20 min for completing a fishing logbook each day. Each estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether (a) this 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 burden estimates, (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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and email to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: March 23, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.12, add the definition of ''Hawaii non-longline pelagic permit'' to read as follows:

§ 665.12 Definitions.

* * * * *

Hawaii non-longline pelagic permit means the permit required by § 665.21 to use non-longline fishing gear to fish for Pacific pelagic management unit species in EEZ waters around Hawaii, the resulting catch of which either is, or is intended to be, sold, bartered, or traded.

* * * * *

3. In § 665.21, add a new paragraph (o) to read as follows:

§ 665.21 Permits.

* * * * *

(o) The owner of any vessel used to fish for Pacific pelagic management unit species using non-longline gear in EEZ waters around Hawaii, the resulting catch of which either is, or is intended to be, sold, bartered, or traded, must have a valid Hawaii non-longline pelagic permit issued for the vessel.

* * * * *

5. In § 665.22, add new paragraph (uu) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(uu) Engage in fishing using non-longline gear for Pacific pelagic management unit species in EEZ waters around Hawaii without a valid Hawaii non-longline pelagic permit as required under § 665.21(o).

* * * * *

[FR Doc. E7–5825 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070316061–7061–01; I.D. 031907B]

RIN 0648–AV13

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend regulations supporting the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to revise requirements for the facilitation of observer data transmission and improve inseason support for observers. The proposed rule would promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Written comments must be received by April 27, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by any of the following methods:

- E-mail: *0648–AV13–PR-OCS@noaa.gov*. Include in the subject line the following identifier: ''OCS proposed rule.'' E-mail comments, with or without attachments, are limited to 5 megabytes;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557;
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or
- Webform at the Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the mailing address above or from the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228, or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council originally adopted and NMFS approved and implemented the

current ''interim'' Observer Program (Observer Program) in 1996 (61 FR 56425, November 1, 1996). Through interim extensions, Observer Program regulatory requirements have been extended through 2007 (62 FR 67755, December 30, 1997; 63 FR 69024, December 15, 1998; 65 FR 80381, December 21, 2000; and 67 FR 72595, December 6, 2002). A proposed rule that would extend regulations implementing the Observer Program indefinitely was published on February 22, 2007 (72 FR 7948).

The Observer Program provides the regulatory framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Observer Program at § 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska, as well as establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

Timely electronic communication of catch reports submitted to NMFS by industry and observers is crucial for groundfish quota and prohibited species catch allowance monitoring. In July 1995, NMFS issued a final rule (60 FR 34904, July 5, 1995) that required computer hardware and software that enabled observers to send NMFS electronic data on all catcher/processors, motherships, and shoreside processors that process groundfish. In October 2003, a final rule was published (68 FR 58038, October 8, 2003) that extended these requirements to all catcher vessels that are required to carry an observer at all times during fishing operations. In April 2006, a final rule (71 FR 20346, April 20, 2006) was issued that, in part, revised hardware requirements to allow software upgrades installation. These rulemakings referred to the electronic data submission and communications system as ''Atlas.''

Regulations describing hardware and software requirements for electronic submission of observer reports on all catcher/processors, motherships, catcher vessels required to carry an observer at all times, and from shoreside and stationary floating processors are found at § 679.50(g)(1) and (g)(2). This electronic data submission and communications system is now called the ''observer communications system (OCS).'' The OCS is comprised of computers and communications equipment supplied by catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors, as well as custom software provided by NMFS. The OCS allows observers to rapidly process and report the data they collect to NMFS. Its use on catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors has enhanced timely and accurate fisheries data reporting.

Regulations at § 679.50(g)(1) and (g)(2) require each OCS-use computer to meet processing chip, memory, operating system, disk drives, and modem minimum specifications. Since its implementation, OCS requirements have been periodically revised through proposed and final rulemaking to require necessary upgrades as commercially available software became obsolete or unsupported by its manufacturer, or as NMFS upgraded the OCS software component to increase data quality and efficiency.

Rather than propose necessary hardware and software component upgrades to support new OCS software, NMFS proposes to remove these specific requirements. NMFS proposes to require that each catcher vessel, catcher/processor, mothership, and shoreside and stationary floating processor already subject to OCS requirements provide hardware and software that is fully functional and operational with the NMFS-supplied software. The term ''functional'' would mean that all the tasks and components of the NMFS supplied software and data transmissions to NMFS could be executed effectively by the computer equipment. NMFS would no longer revise OCS hardware and software requirements through rulemaking. As changes to the software component of the OCS become necessary to support electronic communications of observer data, Observer Program staff would communicate in writing with vessel and plant personnel to describe those changes. Catcher vessels, catcher/processors, motherships, and shoreside or stationary floating processors subject to OCS requirements would be required to ensure their computer hardware and software components continued to meet the functionality and operational requirements.

Observer Program staff are currently upgrading the OCS software component. One reason for the upgrade is that the commercial database software used to store observer-collected information and interface with the OCS software is no longer supported by the manufacturer. The new OCS software should increase overall data quality by increasing the functionality and efficiency of the OCS, and interface with new, supported commercial database software. The new OCS software is expected to be available for installation for the 2008 fishing year. If this proposed regulation is adopted, catcher vessels, catcher/processors, motherships, and shoreside or stationary floating processors must ensure the OCS computer meets the minimum specifications necessary for the software to execute all of its tasks, including communication with NMFS computers to transmit data for the 2008 fishing year.

Changes to OCS Regulations

Presently, § 679.50(g)(1)(iii)(B)(*1*) and (g)(2)(iii)(B)(*1*) describe the minimum hardware and software requirements for the computer provided for an observer's use. This action proposes to remove these requirements except that the computer would still be required to be connected to a communication device that provides a point-to-point modem NMFS host computer connection.

Proposed regulations at § 679.50(g)(1)(iii)(B)(*2*) and (g)(2)(iii)(B)(*2*) would require catcher vessel, catcher/processor, mothership, and shoreside or stationary floating processor operators to install the most recent NMFS-provided OCS software version or other NMFS-approved, commercially available software. While no commercially available software has been approved at this time, NMFS would consider approving commercially available software in the future.

Regulations at § 679.50(g)(1)(iii)(C) and (g)(2)(iii)(C) currently require all OCS hardware to be fully functional and operational. According to these regulations, ''functional'' means that the hardware can initiate and transmit data to NMFS. Under this action, ''functional'' would be defined so that all of the NMFS-supplied, or other approved, software's tasks and components must also be fully functional and operational on the computer equipment. Additionally, NMFS proposes to redesignate these paragraphs as § 679.50(g)(1)(iii)(B)(*3*) and (g)(2)(iii)(B)(*3*), respectively, to clarify that both software and hardware OCS components must be functional.

The revisions described above are necessary to accommodate the larger, more sophisticated software and database programs provided, or other approved, by NMFS.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by

section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. An action description, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. An IRFA copy is available from NMFS (see **ADDRESSES**) and is not repeated here. An analysis summary follows.

This proposed rule would require vessels and shoreside or stationary floating processors to meet current technology standards necessary to support OCS software changes as they occur. Entities subject to OCS requirements include all motherships, catcher/processors, shoreside or stationary floating processors and catcher vessels required to carry an observer at all times. These proposed actions would revise requirements for the facilitation of observer data transmission and improve support for observers.

All motherships have gross revenues in excess of $4 million and are considered large entities. Data available for 2005 indicate that 17 of the 83 catcher/processors active in the groundfish fisheries that year would be considered small entities. Confidentiality restrictions require NMFS to report gross revenue information in aggregate of four or more entities. These restrictions prevent NMFS from reporting the number of catcher vessels and shoreside or stationary floating processors regulated under this proposed action as small entities because each group is no larger than four.

Alternative 1 described in the EA/RIR/IRFA is the status quo alternative. Current regulations regarding computing and communications equipment would remain in effect.

Alternative 2 would remove current hardware and software specifications for all vessels and shoreside or stationary floating processors currently subject to OCS requirements, and instead require them to ensure the computer provided for use by an observer meets the minimum specifications necessary for the NMFS-provided OCS software to execute all of its tasks, including communicate with NMFS computers to transmit data.

Alternative 3 would revise current regulations to upgrade minimum hardware and software specifications for all vessels and shoreside or stationary floating processors currently subject to OCS requirements. Future changes to OCS software that would require hardware and software upgrades would require additional rulemaking.

Upgrade costs to accommodate anticipated changes to OCS software are estimated to average $93 for all catcher/processors, $200 for all motherships, $315 for all shoreside and stationary floating processors, and $438 for all catcher vessels required to carry an observer at all times under the proposed action. For the 17 catcher/processors considered small entities, the cost is estimated at about 0.004 percent of one year's gross revenues. As noted above, NMFS is unable to report gross revenues for catcher vessels and shoreside or stationary floating processors considered small entities under this action. Therefore, OCS upgrade costs cannot be reported as a percentage of gross revenues for these entities.

No additional recordkeeping, reporting, or compliance requirements are associated with this action.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 23, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–199, 118 Stat. 110.

2. In § 679.50, paragraph (g)(1)(iii)(C) is redesignated as paragraph (g)(1)(iii)(B)(*3*) and revised; paragraph (g)(2)(iii)(C) is redesignated as paragraph (g)(2)(iii)(B)(*3*) and revised; and paragraphs (g)(1)(iii)(B)(*1*) and (*2*), and (g)(2)(iii)(B)(*1*) and (*2*) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) * * *

(*1*) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*2*) *NMFS-supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (g)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(*3*) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (g)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(1)(iii)(B)(*2*) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

(2) * * *

(iii) * * *

(B) * * *

(*1*) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside or stationary floating processor specified in paragraph (g)(2) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(*3*) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (g)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii)(B)(*2*) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

[FR Doc. E7–5826 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 60

Thursday, March 29, 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

Agricultural Marketing Service

[Docket No. AMS–PY–07–0021]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension of a currently approved information collection in support of customer-focused improvement initiatives for USDA-procured poultry, livestock, fruit, and vegetable products.

DATES: Comments on this notice must be received by May 29, 2007.

ADDITIONAL INFORMATION: Interested persons are invited to submit written comments on the internet at *http://www.regulations.gov* or to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20250–0259, (202) 690–3148. Comments should reference the docket number and the date and page number of this 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*.

SUPPLEMENTARY INFORMATION:

Title: Customer Service Survey for USDA-Donated Food Products.

OMB Number: 0581–0182.

Expiration Date, as approved by OMB: 10/31/2007.

Type of Request: Extension of a currently approved information collection.

Abstract: Starting with a 1996 pilot project by AMS, customers have been able to use the Customer Opinion Postcard, Form AMS–11, a 4-by 6-inch postcard, to voluntarily submit their perceptions of poultry, livestock, fruit, and vegetable products procured by USDA for school lunch program (42 U.S.C. 1751 *et seq.*) and other domestic food assistance programs. These cards have proven to be a quick and inexpensive way for AMS to learn customer perception of USDA commodities thereby helping the Agency make improvements to its products. AMS would like to continue the use of the customer opinion postcards to get voluntary customer feedback on various products each year by reapproval of the Customer Opinion Postcard, Form AMS–11. In this way AMS will be better able to meet the quality expectations of school food service personnel and the 26 million school children who consume these products daily.

Information about customers' perceptions of USDA-procured products is sought as a sound management practice to support AMS activities under 7 CFR part 250, regulations for ''Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction.'' The information collected will be used primarily by authorized representatives of USDA (AMS, and the Food and Nutrition Service) and shared with State government agencies and product suppliers. To enable customers to mail cards directly to the commodity program that is soliciting the information, several versions of Form AMS–11 will be used, each with a different return address. Response information about products produced by a particular supplier may be shared with that supplier. Similarly, response information from customers located in a particular State may be shared with government agencies within that State.

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours (5 minutes) per response.

Respondents: State, local, and tribal governments, and not-for-profit businesses.

Estimated Number of Respondents: 8,400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 700 hours.

Copies of this information collection can be obtained from David Bowden, Jr., Chief, Standardization Branch, at (202) 690–3148.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

Dated: March 23, 2007.

Kenneth C. Clayton,

Acting Administrator Agricultural Marketing Service.

[FR Doc. E7–5793 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0173]

Notice of Request for Extension of Approval of an Information Collection; Imported Seed and Screenings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an 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 request an extension of approval of an information collection associated with regulations for importation of seed and screenings.

DATES: We will consider all comments that we receive on or before May 29, 2007.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0173 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–2006–0173, 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–2006–0173.

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 an information collection associated with regulations for importation of seed and screenings, contact Mr. Rodney Young, Botanist, Plant Protection and Quarantine, APHIS, Seed Examination Facility, Bldg. 580, BARC–E, Beltsville, MD 20705; (301) 504–8605; ext. 254. 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: Imported Seed and Screenings.

OMB Number: 0579–0124.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361.

The regulations require the use of a number of information collection activities, including declaration of importation, container labeling, notification of seed location, a seed return request, seed analysis certificates (PPQ Form 925), a compliance agreement (PPQ Form 519), seed identity maintenance, and associated recordkeeping.

We are asking OMB to approve our use of these information collection activities for an additional 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 the burden of the information collection, 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 information collection 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 0.37826 hours per response.

Respondents: Importers of seed and screenings, seed cleaning/processing facility personnel, officials of the Canadian Food Inspection Agency (CFIA), and private seed laboratories accredited by CFIA.

Estimated annual number of respondents: 1,200.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 30,000.

Estimated total annual burden on respondents: 11,348 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 23rd day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5780 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0176]

Notice of Request for Extension of Approval of an Information Collection; Importation of Artificially Dwarfed Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an 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 request an extension of approval of an information collection associated with regulations for the importation of artificially dwarfed plants.

DATES: We will consider all comments that we receive on or before May 29, 2007.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0176 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–2006–0176, 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–2006–0176.

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 an information collection associated with regulations for the importation of artificially dwarfed plants, contact Dr. Arnold Tschanz, Senior Import Specialist, Permits, Registrations, Imports and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–5306. 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: Importation of Artificially Dwarfed Plants.

OMB Number: 0579–0176.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service.

The regulations contained in ''Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (7 CFR 319.37 through 319.37–14) prohibit or restrict the importation of living plants, plant parts, and seeds for propagation.

Among other things, the regulations require artificially dwarfed plants imported into the United States to be accompanied by a phytosanitary certificate issued by the government of the country of origin. This certificate must contain declarations that certain conditions were met in the country of origin to protect against the infestation of the plants by longhorned beetles and other plant pests.

We are asking OMB to approve our use of this information collection activity for an additional 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 the burden of the information collection, 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 information collection 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 0.2533 hours per response.

Respondents: Plant health officials of exporting countries.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 150.

Estimated total annual burden on respondents: 38 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 23rd day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5781 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest; Supplement to the North Sheep Grazing Allotments Final Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an environmental impact statement.

SUMMARY: The Forest Service will prepare a supplement (Supplement) to the environmental impact statement (EIS) for the North Sheep Grazing Allotment Final EIS. The Supplement will include additional analyses and new information concerning Management Indicator Species (MIS), capable and suitable grazing lands, and adaptive management strategies.

DATES: Comments concerning the scope of the analysis must be received 45 days after publication of the draft Supplement. The draft Supplement is expected at the end of August 2007 and the final Supplement is expected to be available January 2008.

ADDRESSES: Send written comments to Sawtooth National Forest; Attn: North Sheep Allotments Supplement; 5 North Fork Canyon Road, Ketchum, Idaho 83340; or via telephone at (208) 727–5000; or you may hand-deliver your comments to the Sawtooth National Recreation Office, located at 5 North Fork Canyon Road, Ketchum, during normal business hours from 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), and Word (.doc) to: *comments-intermtn-sawtooth@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Carol Brown, Assistant Forest Planner, at the address above.

SUPPLEMENTARY INFORMATION: The original Notice of Intent for the North Sheep EIS was published in the **Federal Register** Vol. 68, No. 87, May 6, 2003. A revised Notice of Intent was published in the **Federal Register** Vol. 68, No. 145, July 9, 2003. On September 30, 2004, two Records of Decision were issued, based on the North Sheep Final EIS. These decisions were appealed in

2004. In 2005, the Appeal Deciding Officer affirmed both decisions.

Purpose and Need for Action

The Supplement will not change the purpose and need for the North Sheep Final EIS which was described on page 1–5.

Proposed Action

The Supplement will not change the proposed action for the North Sheep Final EIS which was described on pages 1–5 through 1–6.

Responsible Official

There are two Responsible Officials involved. For decisions regarding the Baker Creek and North Fork-Boulder allotments, the Responsible Official is the District Ranger, Ketchum Ranger District, P.O. Box 2356 (206 Sun Valley Road), Ketchum, Idaho 83340. For the Smiley Creek and Fisher Creek allotments, the Area Ranger of the SNRA is the Responsible Official—5 North Fork Canyon Road; Ketchum, ID 83340.

Nature of Decision To Be Made

Each Responsible Official will review the information on the Supplement and determine if their 2004 Record of Decision based on the North Sheep Final EIS should be modified or if the original decision is to remain in effect and unchanged.

Scoping Process

Public scoping for the Supplement will commence with the publication of this Notice of Intent. Public notices will be placed in local newspapers. Press releases will be distributed to the media.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the Supplement to the North Sheep EIS. The comment period for scoping is 30 days from the date the EPA publishes this notice of intent in the **Federal Register**. A legal notice will be published in the newspaper of record and a Notice of Availability will be published in the **Federal Register** to inform the public when supplemental information is available for review and comment. The draft Supplement will be distributed to all parties that received the 2004 North Sheep Final EIS and record of decision and to those parties that filed an appeal of the 2004 North Sheep RODs.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft Supplement to the EIS will be prepared for comment. The comment period on the draft Supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Supplement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Supplement. Comments may also address the adequacy of the draft Supplement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 6, 2007.

Jane Kollmeyer,

Sawtooth Forest Supervisor.

[FR Doc. 07–1533 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Household Water Well System Grant Program Announcement of Application Deadlines and Funding

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: USDA Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces its fiscal year (FY) 2007 funding and application window for the Household Water Well System (HWWS) Grant Program. The HWWS Grant Program is authorized under Section 6012 of the Farm Security and Rural Investment Act of 2002 (The Act), Public Law 107–171. The Act authorizes USDA Rural Development to make grants to qualified private non-profit organizations to establish lending programs for household water wells. For FY 2007, the HWWS grant funding available is $990,000. The non-profit organizations will use the grants to make loans to individual homeowners to construct or upgrade a household water well system for an existing home. The organizations must contribute an amount equal to at least 10 percent of the grant request to capitalize the loan fund. Applications may be submitted in paper or electronic format. The HWWS Grant Program regulations are contained in 7 CFR part 1776.

DATES: The deadline for completed applications for a HWWS grant is May 31, 2007. Applications in either paper or electronic format must be postmarked or time-stamped electronically on or before the deadline. Late applications will be ineligible for grant consideration.

ADDRESSES: Submit electronic grant applications through *http://www.grants.gov* (Grants.gov), following the instructions on that Web site. Submit completed paper applications to the U.S. Department of Agriculture, USDA Rural Development Utilities Programs, Mail Stop #1570, Room 2233–S, 1400 Independence Ave., SW., Washington, DC 20250–1570. Applications should be marked ''Attention: Water and Environmental Programs.''

Application guides and materials for the HWWS Grant Program may be obtained electronically through *http://www.usda.gov/rus/water/well.htm.* Call (202) 720–9589 to request paper copies of application guides and materials from the Water and Environmental Programs staff.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, U.S. Department of Agriculture, Rural Development Programs, Water and Environmental Programs, telephone: (202) 720–1937, fax: (202) 690–0649, e-mail: *cheryl.francis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Household Water Well System Grant Program.

Announcement Type: Grant—Initial.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.862.

Due Date for Applications: May 31, 2007.

Items in Supplementary Information

I. Funding Opportunity: Description of the Household Water Well System Grant Program.
II. Award Information: Available funds.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, e-mail, contact name.

I. Funding Opportunity

A. Program Description

The Household Water Well System (HWWS) Grant Program has been established to help individuals with low to moderate incomes finance the costs of household water wells that they own or will own. The HWWS Grant Program is authorized under Section 6012 of the Farm Security and Rural Investment Act of 2002 (The Act), Public Law 107–171. The Act authorizes the USDA Rural Development through the Rural Utilities Service to make grants to qualified private non-profit organizations to establish lending programs for household water wells.

As the grant recipients, non-profit organizations will receive HWWS grants to establish lending programs that will provide water well loans to individuals. The individuals, as loan recipients, may use the loans to construct, refurbish, and service their household well systems. A loan may not exceed $8,000 and will have a term of up to 20 years at a one percent annual interest rate.

B. Background

The USDA Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. The USDA Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

Central water systems may not be the only or best solution to drinking water problems. Distance or physical barriers make public central water systems expensive in remote areas. A significant number of geographically isolated households without water service might require individual wells rather than connections to new or existing community systems. The goal of the USDA Rural Development is not only to make funds available to those communities most in need of potable water but also to ensure that facilities used to deliver drinking water are safe and affordable. There is a role for private wells in reaching this goal.

C. Purpose

The purpose of the HWWS Grant Program is to provide funds to non-profit organizations to assist them in establishing loan programs from which individuals may borrow money for household water well systems. Applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems. Priority will be given to the non-profit organizations that:

1. Demonstrate experience in promoting safe, productive uses of household water wells and ground water

2. Demonstrate significant management experience in making and servicing loans to individuals.

3. Contribute more than 50 percent of the grant amount in cash or other liquid assets in order to capitalize the revolving loan fund.

4. Propose to serve rural areas containing the smallest communities with a high percentage of low-income individuals eligible for loans.

5. Target areas which lack running water, flush toilets, and modern sewage disposal systems.

Due to the limited amount of funds available under the HWWS Program, one or two applications may be funded from FY 2007 funds. Previously funded grant recipients must apply for a different target area to be considered for funding under this announcement.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $990,000.

Anticipated Number of Awards: 1 or 2.

Length of Project Periods: 12-month project.

Assistance Instrument: Grant Agreement with successful applicants before any grant funds are disbursed.

III. Eligibility Information

A. Who Is Eligible for Grants?

1. An organization is eligible to receive a Household Water Well grant if it:

a. Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS). Faith-based organizations are eligible and encouraged to apply for this program.

b. Is legally established and located within one of the following:

(1) A State within the United States
(2) The District of Columbia
(3) The Commonwealth of Puerto Rico
(4) A United States territory

c. Has the legal capacity and authority to carry out the grant purpose;

d. Has sufficient expertise and experience in lending activities;

e. Has sufficient expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water;

f. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;

g. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

2. An individual is ineligible to receive a Household Water Well grant. An individual may receive only a loan.

B. What are the basic eligibility requirements for a project?

1. *Project Eligibility.* To be eligible for a grant, the project must:

a. Be a revolving loan fund created to provide loans to eligible individuals to construct, refurbish, and service individually-owned household water well systems (see 7 CFR 1776.11 and 1776.12). Loans may not be provided for home sewer or septic system projects.

b. Be established and maintained by a private, non-profit organization.

c. Be located in a rural area. Rural area is defined as locations other than cities or towns of more than 50,000 people and the adjacent urbanized area of such towns and cities.

2. *Required Matching Contributions.* Grant applicants must provide written

evidence of a matching contribution of at least 10 percent from sources other than the proceeds of a HWWS grant. In-kind contributions will not be considered for the matching requirement. Please see 7 CFR 1776.9 for the requirement.

3. *Other—Requirements*

a. DUNS Number. An organization must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. A DUNS number will be required whether an applicant is submitting a paper application or an electronic application through *http://www.grants.gov.* To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or request one on-line at *http://www.dnb.com.*

b. Eligibility for Loans. Individuals are not eligible for grants but are eligible for loans. To be eligible for a loan, an individual must:

(1) Be a member of a household of which the combined household income of all members does not exceed 100 percent of the median non-metropolitan household income for the State or territory in which the individual resides. Household income is the total income from all sources received by each adult household member for the most recent 12-month period for which the information is available. It does not include income earned or received by dependent children under 18 years old or other benefits that are excluded by Federal law. The non-metropolitan household income must be based on the most recent decennial census of the United States.

USDA Rural Development publishes a list of income exclusions in 7 CFR 3550.54(b). Also, a list of federally Mandated Exclusions from Income, published by the Department of Housing and Urban Development may be found in the **Federal Register**, April 20, 2001 at 66 FR 20318.

(2) Own and occupy the home being improved with the proceeds of the Household Water Well loan or be purchasing the home to occupy under a legally enforceable land purchase contract which is not in default by either the seller or the purchaser.

(3) Own the home in a rural area.

(4) Not use the loan for a water well system associated with the construction of a new dwelling.

(5) Not use the loan to substitute a well for water service available from collective water systems. (For example, a loan may not be used to restore an old well that was abandoned when a dwelling was connected to a water district's water line.)

(6) Not be suspended or debarred from participation in Federal programs.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the HWWS Grant regulation are available from these sources:

1. On-line for electronic copies: *http://www.grants.gov* or *http://www.usda.gov/rus/water/well.htm*, and

2. USDA Rural Development for paper copies: USDA Rural Development Utilities Programs, Water Programs Division, Room 2234 South, Stop 1570, 1400 Independence Avenue, SW., Washington, DC 20250–1570, Telephone: (202) 720–9589; Fax: (202) 690–0649.

B. Content and Form of Application Submission

1. *Rules and Guidelines*

a. Detailed information on each item required can be found in the Household Water Well System Grant Program regulation and the Household Water Well System Grant Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of HWWS financial assistance specified in the regulation. The regulation and application guide provide specific guidance on each of the items listed.

b. Applications should be prepared in conformance with the provisions in 7 CFR part 1776, subpart B, and applicable USDA regulations including 7 CFR parts 3015 and 3019. Applicants should use the Household Water Well System Grant Application Guide which contains instructions and other important information in preparing their application. Completed applications must include the items found in the checklist in the next paragraph.

2. *Checklist of Items in Completed Application Packages*

The forms in items 1 through 6 must be completed and signed where appropriate by an official of your organization who has authority to obligate the organization legally. The forms may be found on-line at the USDA Rural Development Web site: *http://www.usda.gov/rus/water/wwforms.htm.* See section V, ''Application Review Information,'' for instructions and guidelines on preparing Items 7 through 13.

Application Items

1. SF–424, ''Application for Federal Assistance''.
2. SF–424A, ''Budget Information—Non-Construction Programs''.
3. SF–424B, ''Assurances—Non-Construction Programs''.
4. SF–LLL, ''Disclosure of Lobbying Activity''.
5. Form RD 400–1, ''Equal Opportunity Agreement''.
6. Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).
7. Project Proposal:
   Project Summary.
   Needs Assessment.
   Project Goals and Objectives.
   Project Narrative.
8. Work Plan.
9. Budget and Budget Justification.
10. Evidence of Legal Authority and Existence.
11. Documentation of non-profit status and IRS Tax Exempt Status.
12. List of Directors and Officers.
13. Financial Information and Sustainability (narrative).
14. Assurances and Certifications of Compliance with Other Federal Statutes.

3. *Compliance With Other Federal Statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to, the following:

a. 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 7 CFR part 3015—Uniform Federal Assistance Regulations.

c. 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

d. 7 CFR part 3018—New Restrictions on Lobbying.

e. 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

f. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *www.LEP.gov.*

g. Federal Obligation Certification on Delinquent Debt.

C. How Many Copies of an Application Are Required?

1. *Applications Submitted on Paper.* Submit one signed original and two additional copies. The original and each of the two copies must include all required forms, certifications,

assurances, and appendices, be signed by an authorized representative, and have original signatures. Do not include organizational brochures or promotional materials.

2. *Applications Submitted Electronically.* The additional paper copies are unnecessary if the application is submitted electronically through *http://www.grants.gov.*

D. How and Where to Submit an Application

1. Submitting Paper Applications

a. For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date to: USDA Rural Development Utilities Programs, Water Programs Division, Room 2234 South, Stop 1570, 1400 Independence Avenue, SW., Washington, DC 20250–1570.

b. Applications must show proof of mailing or shipping by one of the following:

(1) A legibly dated U.S. Postal Service (USPS) postmark;

(2) A legible mail receipt with the date of mailing stamped by the USPS; or

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

c. If a deadline date falls on a weekend, it will be extended to the following Monday. If the date falls on a Federal holiday, it will be extended to the next business day.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. USDA Rural Development encourages applicants to consider the impact of this procedure in selecting an application delivery method.

2. Submitting Electronic Applications

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through Grants.gov at *http://www.grants.gov.*

c. Applicants who apply through Grants.gov should submit their applications before the deadline.

d. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application. USDA Rural Development may request original signatures on electronically submitted documents later.

e. To use Grants.gov:

(1) Follow the instructions on the Web site to find grant information.

(2) Download a copy of an application package.

(3) Complete the package off-line.

(4) Upload and submit the application via the Grants.gov Web site.

f. You must be registered with Grants.gov before you can submit a grant application.

(1) You will need a DUNS number to access or register at any of the services. In addition to the DUNS number required of all grant applicants, your organization must be listed in the Central Contractor Registry (CCR). If you have not used Grants.gov before, you will need to register with the CCR and the Credential Provider. Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days. USDA Rural Development recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(2) The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1–888–227–2423 or you may register online at *http://www.ccr.gov.*

(3) The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov at *https://apply.grants.gov/OrcRegister.*

(4) If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. Deadlines

The deadline for paper and electronic submissions is May 31, 2007. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than the closing date to be considered for FY 2007 grant funding. Electronic applications must have an electronic date and time stamp by midnight of May 31, 2007, to be considered on time. USDA Rural Development will not accept applications by fax or e-mail. Applications that do not meet the criteria above are considered late applications and will not be considered. USDA Rural Development will notify each late applicant that its application will not be considered.

F. Funding Restrictions

1. Eligible Grant Purposes

a. Grant funds must be used to establish and maintain a revolving loan fund to provide loans to eligible individuals for household water well systems.

b. Individuals may use the loans to construct, refurbish, rehabilitate, or replace household water well systems up to the point of entry of a home. Point of entry for the well system is the junction where water enters into a home water delivery system after being pumped from a well.

c. Grant funds may be used to pay administrative expenses associated with providing Household Water Well loans.

2. Ineligible Grant Purposes

a. Administrative expenses incurred in any calendar year that exceed 10 percent of the HWWS loans made during the same period do not qualify for reimbursement.

b. Administrative expenses incurred before USDA Rural Development executes a grant agreement with the recipient do not qualify for reimbursement.

c. Delinquent debt owed to the Federal Government.

d. Grant funds may not be used to provide loans for household sewer or septic systems.

e. Household Water Well loans may not be used to pay the costs of water well systems for the construction of a new house.

f. Household Water Well loans may not be used to pay the costs of a home plumbing system.

V. Application Review Information

A. Criteria

This section contains instructions and guidelines on preparing the project proposal, work plan, and budget sections of the application. Also, guidelines are provided on the additional information required for USDA Rural Development to determine eligibility and financial feasibility.

1. *Project Proposal.* The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of the loan program. Explain what will be accomplished by lending funds to individual well owners. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should include the following elements:

a. *Project Summary.* Present a brief project overview. Explain the purpose of the project, how it relates to USDA

Rural Development's purposes, how the project will be executed, what the project will produce, and who will direct it.

b. *Needs Assessment.* To show why the project is necessary, clearly identify the economic, social, financial, or other problems that require solutions. Demonstrate the well owners' need for financial and technical assistance. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Provide information on the household income of the area and other demographical information. Address community needs.

c. *Project Goals and Objectives.* Clearly state the project goals. The objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the grant and loan program.

d. *Project Narrative.* The narrative should cover in more detail the items briefly described in the Project Summary. Demonstrate the grant applicant's experience and expertise in promoting the safe and productive use of individually-owned household water well systems. The narrative should address the following points:

(1) Document the grant applicant's ability to manage and service a revolving fund. The narrative may describe the systems that are in place for the full life cycle of a loan from loan origination through servicing. If a servicing contractor will service the loan portfolio, the arrangement and services provided must be discussed.

(2) Show evidence that the organization can commit financial resources the organization controls. This documentation should describe the sources of funds other than the HWWS grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that the organization has secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

2. *Work Plan.* The work plan or scope of work must describe the tasks and activities that will be accomplished with available resources during the grant period. It must include who will carry out the activities and services to be performed and specific timeframes for completion. Describe any unusual or unique features of the project such as innovations, reductions in cost or time, or extraordinary community involvement.

3. *Budget and Budget Justification.* Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the HWWS grant for which you are applying. ''Non Federal resources'' are all other Federal and non-Federal resources.

a. Provide a budget with line item detail and detailed calculations for each budget object class identified in section B of the Budget Information form (SF–424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

b. Provide a narrative budget justification that describes how the categorical costs are derived for all capital and administrative expenditures, the matching contribution, and other sources of funds necessary to complete the project. Discuss the necessity, reasonableness, and allocability of the proposed costs. Consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

c. If the grant applicant will use a servicing contractor, the fees may be reimbursed as an administrative expense as provided in 7 CFR 1776.13. These fees must be discussed in the budget narrative. If the grant applicant will hire a servicing contractor, it must demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

d. The indirect cost category should be used only when the grant applicant currently has an indirect cost rate approved by the Department of Agriculture or another cognizant Federal agency. A grant applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the grant applicant is in the process of initially developing or renegotiating a rate, the grant applicant shall submit its indirect cost proposal to the cognizant agency immediately after the applicant is advised that an award will be made. In no event, shall the indirect cost proposal be submitted later than three months after the effective date of the award. Consult OMB Circular A–122 for information about indirect costs.

4. *Evidence of Legal Authority and Existence.* The applicant must provide satisfactory documentation that it is legally recognized under State and Federal law as a non-profit organization. The documentation also must show that it has the authority to enter into a grant agreement with USDA Rural Development and to perform the activities proposed under the grant application. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of State statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

5. *List of Directors and Officers.* The applicant must submit a certified list of directors and officers with their respective terms.

6. *IRS Tax Exempt Status.* The applicant must submit evidence of tax exempt status from the Internal Revenue Service.

7. *Financial Information and Sustainability.* The applicant must submit pro forma balance sheets, income statements, and cash flow statements for the last three years and projections for three years. Additionally, the most recent audit of the applicant's organization must be submitted.

B. Evaluation Criteria

Grant applications that are complete and eligible will be scored competitively based on the following scoring criteria:

Scoring criteria	Points
Degree of expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water.	Up to 30 points.
Degree of expertise and successful experience in making and servicing loans to individuals	Up to 20 points.

Scoring criteria	Points
Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the HWWS grant and points corresponding to such percentages are as follows:	
0 to 9 percent	Ineligible.
10 to 25 percent	5 points.
26 to 30 percent	10 points.
31 to 50 percent	15 points.
51 percent or more	20 points.
Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable.	Up to 20 points.
Lowest ratio of projected administrative expenses to loans advanced	Up to 10 points.
Administrator's discretion, taking into consideration such factors as:	Up to 10 points.
Creative outreach ideas for marketing HWWS loans to rural residents;	
Amount of funds requested in relation to the amount of needs demonstrated in the proposal;	
Excellent utilization of a previous revolving loan fund; and	
Optimizing the use of agency resources.	
Description of the service area, particularly the range of the area:	
State	10 points.
Regional	15 points.
National	20 points.
Extent to which the problem or issue being addressed in the Needs Assessment is defined clearly and supported by data	Up to 15 points.
Extent to which the goals and objectives are clearly defined, tied to the need as defined in the Needs Assessment, and are measurable.	Up to 15 points.
Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected program outcomes.	Up to 20 points.

C. Review Standards

1. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

2. Ineligible applications will be returned to the applicant with an explanation.

3. Complete, eligible applications will be evaluated competitively by a review team, composed of at least two USDA Rural Development employees selected from the Water Programs Division. They will make overall recommendations based on the program elements found in 7 CFR part 1776 and the review criteria presented in this notice. They will award points as described in the scoring criteria in 7 CFR 1776.9 and this notice. Each application will receive a score based on the averages of the reviewers' scores and discretionary points awarded by the Rural Utilities Service Administrator.

4. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

5. Regardless of the score an application receives, if USDA Rural Development determines that the project is technically infeasible, USDA Rural Development will notify the applicant, in writing, and the application will be returned with no further action.

VI. Award Administration Information

A. Award Notices

USDA Rural Development will notify a successful applicant by an award letter accompanied by a grant agreement. The grant agreement will contain the terms and conditions for the grant. The applicant must execute and return the grant agreement, accompanied by any additional items required by the award letter or grant agreement.

B. Administrative and National Policy Requirements

1. This notice, the 7 CFR part 1776, and Household Water Well System Grant Program Application Guide implement the appropriate administrative and national policy requirements. Grant recipients are subject to the requirements in 7 CFR part 1776.

2. Direct Federal grants, sub-award funds, or contracts under the HWWS Program shall not be used to fund inherently religious activities, such as worship, religious instruction, or proselytization. Therefore, organizations that receive direct USDA assistance should take steps to separate, in time or location, their inherently religious activities from the services funded under the HWWS Program. USDA regulations pertaining to the Equal Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found either at the USDA Web site at *http://www.usda.gov/fbci/finalrule.pdf* or 7 CFR part 16.

C. Reporting

1. *Performance Reporting.* All recipients of HWWS Grant Program financial assistance must provide quarterly performance activity reports to USDA Rural Development until the project is complete and the funds are expended. A final performance report is also required. The final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

2. *Financial Reporting.* All recipients of Household Water Well System Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. The grantee will provide an audit report or financial statements as follows:

a. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

b. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/water.* The USDA Rural Development's web site maintains up-to-date resources and contact information for the Household Water Well program.

B. Phone: 202–720–9589.

C. Fax: 202–690–0649.

D. E-mail: cheryl.francis@wdc.usda.gov.

E. *Main point of contact:* Cheryl Francis, Loan Specialist, Water and Environmental Programs, Water Programs Division, USDA Rural Development Utilities Programs, U.S. Department of Agriculture.

Dated: March 12, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–5751 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Community-based Restoration Program Progress Reports.

Form Number(s): None.

OMB Approval Number: 0648–0329.

Type of Request: Regular submission.

Burden Hours: 36.

Number of Respondents: 6.

Average Hours per Response: 30 minutes.

Needs and Uses: The foreign fishing vessels engaged in processing and support of U.S. fishing vessels within the internal waters of a state, in compliance with the terms and conditions set by the authorizing governor, are required to report the tonnage and location of fish received from U.S. vessels. This reporting is required by the Magnuson-Stevens Fishery Conservation and Management Act. Weekly reports are submitted to the NMFS Regional Administrator to allow monitoring of the quantity of fish received by foreign vessels.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly.

Respondent's Obligation: Manadatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5722 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Regional Economic Data Collection Program for Southwest Alaska.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 207.

Number of Respondents: 623.

Average Hours per Response: Fishermen's surveys, 20 minutes; local business surveys, 15 minutes; and fish processor surveys, 40 minutes.

Needs and Uses: The data to be collected via this project will be used for developing regional economic models for Southwest Alaska fisheries. Much of the data required for regional economic analysis associated with Southwest Alaska fisheries are either unavailable or unreliable. The accurate fishery-level data on employment, labor income, and expenditures in the Southwest Alaska fishery and related industries are not currently available but are needed to estimate the effects of fisheries on the economy of Southwest Alaska. In this survey effort, data on these important regional economic variables will be collected and used to develop models that will provide more reliable estimates and significantly improve policymakers' ability to assess policy effects on fishery-dependent communities in Southwest Alaska. The respondents in this survey will be the owners of the vessels landing fish at ports in Southwest Alaska.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5723 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S. Government Trade Event Information Request.

OMB Number: 0625–0238.

Agency Form Number: ITA–4136P.

Type of Request: Regular submission.

Burden: 20 hours.

Number of Respondents: 20.

Average Hours per Response: 1 hour.

Needs and Uses: The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center works closely with the Trade Promotion Coordination Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. Advocacy assistance is wide and varied, but most often is employed to assist U.S. commercial interests that

must deal with foreign governments or government-owned corporations to win or maintain business transactions in foreign markets. The U.S. government Trade Information Request is at the core of the President's National Export Strategy and its goal to show U.S. support at key events for American companies in the international marketplace.

The purpose of the Advocacy Trade Information Request Form is to evaluate senior-level U.S. Government (USG) witnessing requests of a commercial milestone, designed to highlight a company's commercial success in an overseas project or procurement competition. The Advocacy Center, appropriate ITA officials, U.S. Embassies/Consulates worldwide, and other federal government agencies that provide advocacy support to U.S. firms, will request firm(s) seeking USG advocacy support to complete the Trade Information Request Form. This information is needed to ensure that the subject milestone to be witnessed is either a legally binding contract or a commercially significant announcement, which includes highlighted U.S. export content. The information derived from a completed form is critical in helping the Advocacy Center determine whether it is in the U.S. national interest to advocate a specific milestone.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th Street, and Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to David Rostker, OMB Desk Officer, at *David_Rostker@omb.eop.gov* or fax number (202) 395–7285.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5724 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Short Supply Regulations, Petroleum (Crude Oil).

Agency Form Number: None.

OMB Approval Number: 0694–0027.

Type of Request: Extension of a currently approved collection of information.

Burden: 138 hours.

Average Time per Response: 40 minutes to 8 hours per response.

Number of Respondents: 21 respondents.

Needs and Uses: The information is collected in the form of supporting documentation for license applications to export petroleum (crude oil) and is used by licensing officers to determine the exporters compliance with the five statutes governing this collection.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5727 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Business Expenses Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before May 29, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Sheldon G. Ziman, BES Project Manager, Service Sector Statistics Division, U.S. Census Bureau, Room 8K168, Washington DC 20233; phone 301–763–6559 or toll free 888–211–5946; or e-mail *sheldon.g.ziman@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau is proposing a one-time supplement to its annual surveys of retail trade and wholesale distributors, to be conducted in 2008 covering the year 2007.

The Commerce Department's Bureau of Economic Analysis (BEA) has requested that business expense data be collected once every five years. The BEA considers this information as a vital ingredient in the preparation of key measures of the U.S. economy. This data collection will be known as the 2007 Business Expenses Supplement (BES) and will be implemented under the authority of the 2007 Economic Census, which is required by law to be taken every five years under Title 13 of the United States Code.

The 2007 BES is an extension of the annual surveys of retail trade and wholesale distributors, which are conducted on a sample basis with a new sample drawn every fifth year. The 2007 BES is a continuation of similar

collections of business expenses data conducted every fifth year since 1977, and since 1958 on a more limited basis. Data collected by the BES on business operating expenses will complement data on sales, merchandise purchases, and inventories compiled in the two mentioned annual surveys. (Data on operating expenses of other industries are compiled in other Census Bureau programs.) Together these sample-based data are benchmarked to the main economic census and are used to compile economic measures such as value added. The collection of business expenses data is required for reliable measurement of the United States economy. As such, the BEA, producer of gross domestic product (GDP) estimates, is the primary user. The BEA uses the expenses data for developing the national income and product accounts, input-output tables, and economic indexes, and to fill previously identified critical gaps in underlying data in these accounts.

Industrial sectors covered by the BES include wholesale distributors, retail trade, and accommodation and food services, as based on the 2002 North American Industry Classification System (NAICS). The samples used in this data collection consist of employer firms in the covered industries within the U.S. whose probability of selection is determined by sales size.

The information collected will produce statistics by kind of business on operating expenses such as labor costs, depreciation, rent, materials and supplies, utilities, and purchased services such as advertising, repairs, computer services, and professional and technical services. The primary strategy for minimizing respondent burden is the use of sampling; supplementing the Bureau's business annual surveys as the data collection vehicle; optional electronic reporting; and providing for respondents' use of carefully prepared estimates if their book figures are not readily available.

II. Method of Collection

The 2007 BES supplements the Census Bureau's annual surveys of retail trade and wholesale distributors, which are conducted using both the Internet with CensusTaker software and mailout/mailback procedures. Most multi-location companies included in the samples will receive a separate annual/BES report form to consolidate their data for each unique kind of business operated. Only employer businesses will be mailed.

Data for non-employers for retail and accommodation and food service industries will be estimated based on administrative records. The questionnaires along with instructions for Internet reporting will be mailed from the Census Bureau's National Processing Center in Jeffersonville, Indiana. Three periodic mail follow-ups and a telephone follow-up will be conducted in conjunction with the annual surveys. These follow-ups will minimize statistical error due to nonresponse. In addition, responses will be accepted via Fax.

The BES response data will be edited and reviewed, and individual respondents contacted when necessary for clarification of questionable responses.

III. Data

OMB Number: None.

Form Number: None. All of the forms to be used to collect information for the BES are associated with the concurrent business annual surveys of wholesale distributors and retail trade.

Type of Review: Regular submission.

Affected Public: Incorporated and non-incorporated employer businesses in the U.S. classified as retail trade, wholesale distributors, or accommodation and food services.

Estimated Number of Respondents: 28,541.

Estimated Time per Response: 2.7 hours.

Estimated Total Annual Burden Hours: 77,060.

Estimated Total Annual Cost to Respondents: The total cost to respondents is estimated to be $2.4 million based on an hourly salary rate of $30.93 for entry level accountants and auditors multiplied by the annual response burden of 77,060 hours to complete the form.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131, 193, 195, and 224.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5726 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advocacy Quality Assurance Survey

ACTION: Proposed collection renewal; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(2)(A)).

DATES: Written comments must be submitted on or before May 29, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. *E-mail: dHynek@doc.gov*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph Carter, 14th & Constitution Avenue, NW., Washington, DC 20230; *Phone number:* (202) 482–3342; E-mail: *joseph.carter@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service (USCS) is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets.

As part of its mission, the U.S. Commercial Service conducts user satisfaction surveys to collect feedback from the U.S. business clients it serves. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. The results from the surveys are used to make improvements to the agency's business

processes in order to provide better and more effective export assistance to U.S. companies.

The purpose of the survey is to collect feedback from U.S. businesses that receive advocacy services from the U.S. Commercial Service. In providing these services, the U.S. Commercial Service advocates on behalf of a U.S. company that is bidding on a project or government contract, trying to recover payment or goods, or facing a barrier to market entry.

II. Method of Collection

Form ITA–4152P is sent to U.S. companies that receive advocacy assistance from the U.S. Commercial Service.

III. Data

OMB Number: 0625–0251.

Form Number: ITA–4152P.

Type of Review: Regular Submission.

Affected Public: U.S. companies who receive advocacy services from USCS international posts.

Estimated Number of Respondents: 390.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 65 hours.

Estimated Total Annual Costs: $2,275.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for 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 (including hours and costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–5725 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On March 22, 2007, the binational panel issued its decision in the review of the final determination made by the International Trade Commission, respecting Oil Country Tubular Goods from Mexico Final Results of the Sunset Review, Secretariat File No. USA–MEX–2001–1904–06. The binational panel affirmed the Commission's Sunset Review Determination. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., 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 the 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 has been conducted in accordance with these Rules.

Panel Decision: The Panel affirmed the Commission's determination and instructed the Secretariat to issue a Notice of Final Panel Action at the appropriate time under the NAFTA Panel Rule 77(1).

Dated: March 23, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–5742 Filed 3–28–07; 8:45 am]

BILLING CODE 3510–GT–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement); Correction

March 26, 2007.

In the notice published in the **Federal Register** on February 22, 2007 (72 FR 7957), in column 3 on the first line of the table under ''**Specifications**'', please change the number ''5515.11.10'' to read ''5515.11.00''

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 07–1555 Filed 3–26–07; 4:28 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Future of the Military Health Care; Sunshine Act Meeting

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs); DoD.

ACTION: Amendment to notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), the Department of Defense announces an amendment to the March 9, 2007 meeting notice for the Department of Defense Task Force on the Future of the Military Health Care.

On Friday, March 9, 2007 (72 FR 10717), the Department of Defense Task Force on the Future of the Military Health Care announced that its March 28, 2007 meeting would conduct an open meeting from 8:30 a.m. to 4 p.m. The March 9th **Federal Register** notice also indicated that the Task Force would hold an administrative work meeting from 8:30 a.m. to 9:15, and a preparatory work meeting from 3:30 p.m. to 4 p.m.

Due to changing requirements, the Task Force has cancelled its previously scheduled administrative work meeting and will delay the start of its open meeting. Instead the Task Force will conduct a preparatory work meeting from 8:30 a.m. to 11:45 a.m. to gather information, conduct research and analyze relevant issues and facts to draft position papers for deliberation by the Task Force Members. Following the preparatory work meeting, the Task Force will conduct an open meeting. The open meeting will be from 12 p.m. to 3:30 p.m., and the public or interested parties are invited to attend the meeting. Immediately following the public meeting, the Task Force will hold its previously announced preparatory work meeting from 3:40 p.m. to 4 p.m.

In addition to changing the March 28, 2007 meeting schedule, the Task Force is changing the topics to be discussed at the open meeting. The Task Force will discuss managed care issues.

All March 28, 2007 meetings of the Department of Defense Task Force on the Future of the Military Health Care will be held at the National Transportation.

In view of the Task Force's decision to cancel its administrative work meeting to analyze relevant issues and facts to draft position papers for deliberation, the Committee Management Officer for the Department, pursuant to his authority under 41 CFR 102–3.150(b), has authorized a waiver to the 15-calendar day rule (41 CFR 102–3.150(a)).

Additional information and meeting registration is available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 109 (*christine.bader@ha.osd.mil*).

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the National Transportation Safety Board Conference Center. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document to the Executive Secretary of the Department of Defense Task Force on the Future of Military Health Care, *christine.bader@ha.osd.mil,* no later than five (10) business days prior to the scheduled meeting.

Dated: March 23, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–1559 Filed 3–27–07; 10:37 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on Mental Health, Sunshine Act Meeting

AGENCY: DoD, Office of the Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the following meeting is announced:

Name of Committee: Department of Defense Task Force on Mental Health, a duly established subcommittee of the Defense Health Board.

Dates: April 16, 2007 (Morning and Afternoon—Open Session).

Times: 9 a.m.–11:30 a.m. (Morning).

1 p.m.–3 p.m. (Afternoon).

3 p.m.–4 p.m. (Public Testimony).

Location: Marriott Plaza, 555 South Alamo, San Antonio, Texas 78205.

Agenda: Pursuant to 5 U.S.C. 552b, as amended, and 42 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. The purpose of the meeting is to obtain, review, and evaluate information related to the Mental Health Task Force's congressionally-mandated task of assessing the efficacy of mental health services provided to members of the Armed Forces by the Department of Defense. The Task Force members will publicly deliberate on the Elements of the Report outlined by Congress in regards to mental health care delivery to military service members, their families, and veterans. In addition to public deliberations, the Task Force will also conduct administrative sessions.

SUPPLEMENTARY INFORMATION: Following the public meeting of the Department of Defense Task Force on Mental Health will conduct an Administrative Working Meeting from 8 a.m.–12 p.m. on 17 April to discuss administrative matters of the Department of Defense Task Force on Mental Health. In addition, the Task Force, following its public and administrative meetings, will conduct a Preparatory Work Meeting from 1 p.m.–5:30 p.m. on 17 April, and 8 a.m.–5:30 p.m. on 18 April to work on revisions to their draft report in preparation for deliberation by the Defense Health Board in open session on May 4, 2007. Both the Administrative and Preparatory Work Meetings will be held at the Marriott Plaza, 555 South Alamo, San Antonio, Texas 78205. Pursuant to 41 CFR 102–3.160, both the Administrative and Preparation Work Meetings will be closed to the public.

Any member of the public wishing to provide input to the Task Force should submit a written statement in accordance with 41 CFR 102–3.140(c), section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should be no longer than two type-written pages and must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information. Written statements may be submitted to the address listed below or by FAX to 703–681–3321. Statements may also be sent by e-mail to *dhb@ha.osd.mil.*

Individuals submitting a written statement may submit their statement to the Designated Federal Officer at any point, however, if a written statement is not received at lease 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Task Force.

The Designated Federal Officer will review all timely submissions with the Task Force Co-chairs, and ensure they are provided to members of the Task Force before the meeting that is the subject of this notice. After reviewing the written comments, the Co-chairs and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting.

The Designated Federal Officer, in consultation with the Task Force co-chairs may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Task Force.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Defense Health Board, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 123.

Dated: March 26, 2007

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–1561 Filed 3–27–07; 10:37 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics agency

Privatization of Packaged Petroleum, Oils, and Lubricants and Certain Classes of Chemicals

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of Availability of Environmental Assessment and a Draft Finding of No Significant Impact for the Privatization of Packaged Petroleum, Oils, and Lubricants and Certain Classes of Chemicals.

SUMMARY: The Defense Logistics Agency (DLA) announces the availability of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the privatization of Packaged Petroleum, Oils, and Lubricants (POL) as recommended by the 2005 Base Realignment and Closure (BRAC) Commission, and certain classes of chemicals (Federal Supply Codes (FSCs) 6810, 6820, 6840, and 6850), a non-BRAC related action. Hereafter, POLs and the certain classes of chemicals are collectively referred to as POLs. This announcement is made pursuant to the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and the DLA regulation (DLAR 1000.22, Environmental Considerations in DLA Actions in the United States) that implement the National Environmental Policy Act (NEPA).

DATES: The public comment period for the EA and Draft FONSI will end 30 days after publication of this NOA in the **Federal Register** by the Environmental Protection Agency. Comments on the EA and Draft FONSI received by the end of the 30-day period will be considered when preparing the final version of the documents.

ADDRESSES: The EA and Draft FONSI are available for review on the following DLA Web site—*http://www.dscr.dla.mil/UserWeb/FAGA/privatize.htm.* Written comments should be sent to Mr. Linwood I. Rogers at: Defense Supply Center Richmond, Attn: DSCR–G, 800 Jefferson Davis Highway, Richmond, VA 23297. Comments may also be faxed to Mr. Rogers at (804) 279–4137.

FOR FURTHER INFORMATION CONTACT: Mr. Linwood I. Rogers, Phone (804) 279–1425 during normal business hours Monday through Friday or E-Mail: *Linwood.Rogers@dla.mil.*

SUPPLEMENTARY INFORMATION: Under the Proposed Action, DLA would disestablish the wholesale supply, storage, and distribution functions for POLs at a variety of DLA sites nationwide, and centralize the supply contracting function at a single site—the Defense Supply Center, Richmond, Virginia (DSCR). All POL storage, supply, and distribution functions would be privatized through a competitive contracting mechanism. The selected private contractor would take over DLA's role in providing wholesale supply, storage, and distribution of POLs. DSCR would retain oversight over any long-term contracts resulting from the privatization. The anticipated result of this privatization program will be the continued streamlining of DLA functions and improved support to the warfighter. This would be accomplished by leveraging the commercial industry to provide more efficient management of the supply chain that will decrease maintenance delays through better product availability, lower costs to the government through economies of scale, and provide better delivery times through established commercial distribution and warehousing structures.

The EA analyzes the potential effects on the human and natural environments of the Proposed Action, including Land Use, Transportation and Infrastructure, Air Quality, Socioeconomics, Biological Resources, Cultural Resources, and Hazardous Materials, as well as aesthetic and Visual Resources, Noise, Geology and Soils, Water Resources, and Utilities. The No Action alternative, in which the Proposed Action would not be implemented, is also analyzed and provides the baseline conditions for comparison to the Proposed Action. The EA concludes that privatizing the wholesale supply, storage and distribution functions for POLs would result in no significant beneficial or adverse impacts on the environment.

Dated: March 21, 2007.

M.F. Heinrich,

Rear Admiral, SC, USN, Commander.

[FR Doc. 07–1531 Filed 3–28–07; 8:45 am]

BILLING CODE 3620–01–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Wednesday, April 18, 2007, 1–4 p.m.

PLACE: Westin Crown Center, Room: Washington Park 3, One East Pershing Road, Kansas City, Missouri 64108; (816) 474–4400.

AGENDA: The Commission will receive presentations on research findings regarding effective ballot designs and effective polling place signage. The Commission will receive a presentation on the release of a Spanish translation glossary of election terminology. The Commission will also consider other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–1576 Filed 3–27–07; 1:20 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

[OE Docket No. EA–223–B]

Application To Export Electric Energy; CMS Energy Resource Management Company

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: CMS Energy Resource Management Company (CMS) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests or requests to intervene must be submitted on or before April 30, 2007.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 11, 2000, the Department of Energy (DOE) issued Order No. EA–223 authorizing CMS Marketing, Services and Trading Company to transmit electric energy from the United States to Canada as a power marketer for a two-year term. On July 1, 2002, in Order No. EA–223–A, DOE renewed that authorization for a five-year term which expires on July 1, 2007. On February 11, 2004, the applicant notified DOE that it had changed its name to CMS Energy Resource Management Company.

On March 13, 2007, CMS filed an application with DOE to renew the export authority contained in Order No. EA–223–A for an additional five-year term. CMS does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which CMS proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the United States.

CMS will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by CMS has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the CMS application to export electric energy to Canada should be clearly marked with Docket No. EA–223–B. Additional copies are to be filed directly with John E. Palincsar, Senior Corporate Attorney, One Energy Plaza, EP5–430, Jackson, MI, 49201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.oe.energy.gov/304.htm.*

Issued in Washington, DC, on March 23, 2007.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–5785 Filed 3–28–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–211–B]

Application To Export Electric Energy; DTE Energy Trading, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: DTE Energy Trading, Inc. (DTE) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests or requests to intervene must be submitted on or before April 13, 2007.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 24, 1999, the Department of Energy (DOE) issued Order No. EA–211 authorizing DTE to transmit electric energy from the United States to Canada as a power marketer for a two-year term. On April 25, 2002, in Order No. EA–211–A, DOE renewed that authorization for a five-year term, which expires on April 25, 2007.

On March 21, 2007, DTE filed an application with DOE to renew the export authority contained in Order No. EA–211–A for an additional five-year term. DTE does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which DTE proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the United States.

In its renewal application, DTE requested DOE expedite the processing of the application so that it may continue uninterrupted participation in the competitive wholesale marketplace in Ontario. DOE has granted this request and has shortened the public comment period to 15 days.

DTE will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DTE has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DTE application to export electric energy to Canada should be clearly marked with Docket No. EA–211–B. Additional copies are to be filed

directly with Linda S. Portasik, DTE Energy Company, 2000 Second Avenue, 688 WCB, Detroit, MI 48226 AND Sandra C. Steffen, DTE Energy Trading, Inc., 200 Ashley Mews, 414 South Main Street, Ann Arbor, MI 48104.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.oe.energy.gov/304.htm.*

Issued in Washington, DC, on March 23, 2007.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–5782 Filed 3–28–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–018]

Alliance Pipeline, L.P.; Notice of Negotiated Rate

March 22, 2007.

Take notice that on March 16, 2007, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirteenth Revised Sheet No. 11, proposed to be effective April 1, 2007.

Alliance states that copies of the filing have been served on Alliance's customers, state commissions and other interested persons.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5701 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC07–72–000]

Brookfield Asset Management, Inc., Horizon Acquisition Company, Longview Fibre Company; Notice of Filing

March 23, 2007.

Take notice that on March 22, 2007, Brookfield Asset Management, Inc., Horizon Acquisition Co., and Longview Fibre Company, (collectively, Applicants) tendered for filing under section 203(a)(2) of the Federal Power Act, that the Commission authorize a proposed transaction by which Brookfield, a holding company, will acquire a qualifying cogeneration facility through a merger with Longview Fibre Company, which is scheduled to close on April 20, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 online 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 April 12, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5759 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–358–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 22, 2007.

Take notice that on March 20, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2007:

Eleventh Revised Sheet No. 17
Tenth Revised Sheet No. 18
Tenth Revised Sheet No. 19
Ninth Revised Sheet No. 31
Ninth Revised Sheet No. 32

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5704 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–103–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

March 23, 2007.

Take notice that on March 14, 2007, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP07–103–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate approximately eleven miles of pipeline looping facilities, located in Colorado and Oklahoma, to increase natural gas transportation capacity out of the Raton Basin area, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, CIG proposes in the Raton Basin 2007 Expansion Project to construct two, non-contiguous looped pipeline segments adjacent to existing CIG mainlines; one segment of approximately 4.48 miles of 20-inch diameter pipeline, located in Las Animas County, Colorado, and one segment of approximately 6.46 miles of 24-inch diameter pipeline, located in Texas County, Oklahoma. CIG estimates the cost of construction to be $11,895,500. CIG states that it has executed Firm Transportation Agreements with three shippers for an additional 29 MMcf/d of firm transportation service for terms of ten years.

Any questions regarding the application should be directed to Richard Derryberry, Director, Regulatory Affairs, Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944, or call at (719) 520–3782.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5756 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–104–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

March 23, 2007.

Take notice that on March 16, 2007, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP07–104–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to increase the maximum allowable operating pressure (MAOP) on its Line O–1591 and a portion of its Line O–400, located in Licking and Muskingum Counties, Ohio, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Columbia proposes to increase the MAOP on Line O–1591, consisting of approximately of 12-inch diameter pipeline, located in Muskingum County, Ohio, and a portion of Line O–400, consisting of approximately 38.55 miles of 16- and 12-inch diameter pipeline, located in Licking and Muskingum Counties, Ohio, from the current 200 psig to a new MAOP of 500 psig and to operate Line O–1591 and that portion of Line O–400 at the higher pressure. Columbia states that the increase of the MAOP will improve the operating efficiency of the pipeline. Columbia asserts that it does not propose any change in service to its

existing customers as a result of the proposed uprate.

Any questions regarding the application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, or call at (304) 357–2359.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5757 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2686]

Duke Energy Carolinas, LLC; Notice of Authorization for Continued Project Operation

March 23, 2007.

On July 28, 2000, Duke Energy Carolinas, LLC, licensee for the West Fork Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The West Fork Project is located on the Tuckasegee River in Jackson County, North Carolina.

The license for Project No. 2686 was issued for a period ending January 31, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2686 is issued to Duke Energy Carolinas, LLC., for a period effective February 1, 2006 through January 31, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 31, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Energy Carolinas, LLC. is authorized to continue operation of the West Fork Project until such time as the Commission acts on its application for a subsequent license.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5769 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2698]

Duke Energy Carolinas, LLC; Notice of Authorization for Continued Project Operation

March 23, 2007.

On July 25, 2000, Duke Energy Carolinas, LLC, licensee for the East Fork Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The West Fork Project is located on the Tuckasegee River in Jackson County, North Carolina.

The license for Project No. 2698 was issued for a period ending January 31, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2698 is issued to Duke Energy Carolinas, LLC., for a period effective February 1, 2006 through January 31, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 31, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the

Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Energy Carolinas, LLC., is authorized to continue operation of the East Fork Project until such time as the Commission acts on its application for a subsequent license.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5770 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QM07–2–000]

Duke Energy Shared Services, Inc., Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc.; Notice of Filing

March 22, 2007.

Take notice that on March 21, 2007, Duke Energy Shared Services, Inc., (DESS) on behalf of its franchised utility affiliates, Duke Energy Kentucky, Inc., Duke Energy Indiana, Inc., and Duke Energy Ohio, Inc. (collectively, Duke Midwest Companies) tendered for filing an application for relief on a service territory-wide basis, from the provisions of section 292.303(a) of the Commission's regulations.

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 online 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 April 18, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5700 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES07–21–000]

Entergy Nuclear Palisades, LLC; Notice of Filing

March 23, 2007.

Take notice that on March 21, 2007, Entergy Services, Inc. as agent for its affiliate Entergy Nuclear Palisades, LLC (collectively, Entergy Palisades) applied to the Commission under section 204 of the Federal Power Act to issue and sell equity securities and long-term and short-term debt securities up to a limit of a total of $500 million during the period beginning on the date Entergy Palisades becomes a public utility.

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 online 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 April 2, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5760 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–106–000]

EXCO Resources, Inc., TGG Pipeline, Ltd.; Notice of Petition for Declaratory Order

March 22, 2007.

Take notice that on March 15, 2007, EXCO Resources, Inc. (EXCO) and TGG Pipeline, Ltd. (TGG), pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2006), petitioned the Commission to issue a declaratory order finding that TGG has been engaged in natural gas gathering, has not been, and is not, subject to the Commission's Natural Gas Act jurisdiction, and that completion of a proposed natural gas gathering system will not affect TGG's jurisdictional status. EXCO and TGG request that the Commission issue a decision on the petition by May 4, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date set forth below. 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: April 11, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5693 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–330–001, RP00–404–019]

Northern Natural Gas Company; Notice of Tariff Filing

March 22, 2007.

Take notice that on March 16, 2007, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets attached to the filing.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5703 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–111–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

March 22, 2007.

Take notice that on March 19, 2007, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP07–111–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon by sale to Williams Field Services Company, approximately 25.4 miles of the Union Oil Line and associated facilities, located in Garfield and Rio Blanco Counties, Colorado, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Northwest proposes to abandon by sale, approximately 25.4 miles of 8-inch diameter pipeline of the Union Oil Line and associated facilities; the Parachute Receipt Meter Station, including two 6-inch meter skids and associated piping, valves, and appurtenances; the Parachute Delivery Meter Station, including piping, valves, and appurtenances remaining after partial abandonment by removal of station facilities under Northwest's blanket certificate; and cathodic protection stations. Northwest states that the estimated sales price of $1,972,586 represents the net book value of the facilities at the time of closing plus Northwest's related abandonment costs of approximately $50,000.

Any questions regarding the application should be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900, or call at (801) 584–7117.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5694 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–102–000]

Paiute Pipeline Company; Notice of Request Under Blanket Authorization

March 22, 2007.

Take notice that on March 14, 2007, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP07–102–000 a prior notice request pursuant to sections 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) to construct and operate certain mainline natural gas facilities as part of its ''2007 Expansion Project,'' all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Paiute proposes to (1) install a total of approximately 3.2 miles of new mainline loop facilities on its Carson and South Tahoe Laterals in Carson City County and Douglas County, Nevada, and (2) modify measurement and pressure regulating facilities at the South Tahoe Pressure Limiting Station on its South Tahoe Lateral in Douglas County, Nevada, under Section 157.210 of the Commission's regulations. In addition, as part of its 2007 Expansion Project, Paiute plans to (1) replace approximately 1.5 miles of existing lateral pipeline with larger diameter pipeline on its Yerington Lateral in Lyon County, Nevada, and (2) modify four existing delivery point facilities served by its Carson and South Tahoe Laterals, under the automatic authorization provisions of Sections 157.208(a) and 157.211(a)(1), respectively, of the Commission's regulations. Paiute states that the purpose of the proposed project is to enhance the capacity on its Carson and South Tahoe Laterals to meet the requests of three shippers for 8,913 Dth/d of additional firm transportation service capacity. Paiute further states that the total cost of all of the 2007 Expansion Project facilities is estimated to be $5,273,000.

Any questions regarding the application should be directed to Edward C. McMurtrie, Vice President/General Manager, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197 at (702) 876–7178.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5692 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–113–000]

SemGas Storage, L.L.C.; Notice of Petition for Exemption

March 23, 2007.

Take notice that on March 22, 2007, SemGas Storage L.L.C. (SemGas), 6120 Yale Avenue, Tulsa, OK 74136, filed with the Commission in Docket No. CP07–113–000 a petition for exemption from certificate requirements for temporary acts and operations and request for expedited action, pursuant to section 7(c)(1)(b) of the Natural Gas Act (NGA), as amended, and Rule 207(a)(5) of the Commission's Rules of Practice and Procedure. SemGas seeks approval of an exemption from the certificate requirements in order to perform temporary activities related to the determination of the feasibility of the Avoca Storage Project in Steuben County, New York, as more fully set forth in the petition which is open to the public for inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to T.W. Cook, Two Warren Place, 6120 Yale Avenue, Suite 700, Tulsa, OK 74136, or via telephone at (918) 524–8503, facsimile number (918) 524–8290, or e-mail *twcook@cox.net*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, 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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be

placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: April 2, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5758 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–322–000]

Williston Basin Interstate Pipeline Company; Notice Correction Filing

March 22, 2007.

Take notice that on March 19, 2007, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing a revised Page 4 of Appendix C, Attachment E and a revised Page 4 of Appendix D, Attachment D to the workpapers submitted with Williston Basin's Annual Fuel and Electric Power Reimbursement Adjustment that was filed with the Commission on March 1, 2007 in the above referenced proceeding.

Williston Basin states that the revised pages reflect corrections to the Actual Transportation Quantities shown in column (a) of each page for the months of October, November and December 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5702 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–7–001]

Tesoro Refining and Marketing Company, Complainant v. Calnev Pipe Line, L.L.C., Respondent; Notice of Complaint Amendment

March 23, 2007.

Take notice that on March 16, 2007, Tesoro Refining and Marketing Company hereby amends its Complaint dated January 30, 2007 to challenge grandfathered rates in the event that the Commission concludes that Calnev's rates are grandfathered.

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 online 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 April 5, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5761 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–184–000 Through RP07–304–000]

Unassigned Gas Docket Numbers; Notice of Unused RP Docket Number

March 23, 2007.

Take notice that Docket Numbers RP07–184–000 through RP07–304–000 were not assigned to any filing due to computer error. These docket numbers will not be assigned to any filings with the Commission.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5772 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 23, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–42–000.

Applicants: North Allegheny Wind, LLC, B&B Wind Portfolio 1 LLC, Babcock & Brown Wind Partners-U.S. LLC, Aragonne Wind LLC, Allegheny Ridge Wind Farm, LLC, Mendota Hills, LLC, BBPOP Wind Equity LLC, GSG, LLC.

Description: Consummation Notice of BBPOP Wind Equity LLC, et al. of Phase 1 of transaction.

Filed Date: 03/19/2007.

Accession Number: 20070319–5081.

Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–150–003.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits an errata to its filings made on 11/2/06 and 2/9/07.

Filed Date: 03/20/2007.

Accession Number: 20070322–0156.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 10, 2007.

Docket Numbers: ER07–205–000, ER07–205–001.

Applicants: Ameren Energy Marketing Company, Union Electric Company, Ameren Energy, Ameren Energy Marketing Company, Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company.

Description: Central Illinois Light Co dba AmerenCILCO et al request to withdraw their 11/9/06 filing because no affiliate sales would take place in connection with the application.

Filed Date: 03/19/2007.

Accession Number: 20070322–0043.

Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Docket Numbers: ER07–385–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of Public Service Company of Oklahoma et al submits revisions to its OATT, Third Revised Volume No. 6.

Filed Date: 03/01/2007.

Accession Number: 20070320–0013.

Comment Date: 5 p.m. Eastern Time on Friday, March 30, 2007.

Docket Numbers: ER07–628–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits the 2007 Wholesale Formula Rate Update applicable to the Cities of Hope, Thayer, Campbell, North Little Rock, West Memphis and Prescott.

Filed Date: 03/13/2007.

Accession Number: 20070322–0006.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 03, 2007.

Docket Numbers: ER07–638–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits informational filing setting forth the changed loss factor effective 3/1/07 together with back-up materials.

Filed Date: 03/15/2007.

Accession Number: 20070321–0063.

Comment Date: 5 p.m. Eastern Time on Thursday, April 05, 2007.

Docket Numbers: ER07–640–000.

Applicants: Citadel Energy Investments Ltd.

Description: Citadel Energy Investments Ltd submits its petition for acceptance of Initial Rate Schedule, Waivers, and Blanket Authorization.

Filed Date: 03/21/2007.

Accession Number: 20070322–0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–641–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits notice of succession reflecting the adoption of Goldendale's Rate Schedule FERC 2 for sales of reactive power from the Golden Facility etc pursuant to FERC's 2/1/07 Order.

Filed Date: 03/21/2007.

Accession Number: 20070323–0177.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–642–000.

Applicants: Southern Companies Services, Inc.

Description: Southern Co Services, acting as agent for Alabama Power Co et al submits a notice of adoption of revised transmission loading relief procedures.

Filed Date: 03/21/2007.

Accession Number: 20070323–0178.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER97–504–011.

Applicants: Pacific Northwest Generating Cooperative, Inc.

Description: PNGC Power submits updated market analysis and request for continued authority to transact pursuant to market-based rate authority.

Filed Date: 03/16/2007.

Accession Number: 20070321–0110.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–27–000.

Applicants: Detroit Edison Company.

Description: The Detroit Edison Company's application for an order authorizing short-term securities bearing final maturity dates not to exceed one year after issue.

Filed Date: 03/19/2007.

Accession Number: 20070321–0058.

Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For

assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5773 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

Santee Cooper Hydroelectric Project; Notice of Availability of the Draft Environmental Impact Statement for the Santee Cooper Hydroelectric Project and Intention to Hold Public Meeting

March 23, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Santee Cooper Hydroelectric Project, and have prepared a draft environmental impact statement (DEIS) for the project which is located on the Santee and Cooper Rivers in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumpter Counties, South Carolina.

The DEIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Santee Cooper Hydroelectric Project. The DEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the DEIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All Comments must be filed within 60 days of the date of this notice, and should reference the Santee Cooper Hydroelectric Project, Project No. 199–205. Comments may be filed electronically via the internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this DEIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the DEIS. The time and place of the meeting is as follows:

Date: Wednesday, May 2, 2007.

Time: 7:30 PM (EDT).

Place: Holiday Inn Express.

Address: 505 R.C. Dennis Blvd., Moncks Corner, SC.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public records for the project. This meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/Eventslist.aspx* along with other related information.

For further information, please contact Monte TerHaar at (202) 502–6035 or at *monte.terhaar@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5697 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

Santee Cooper Hydroelectric Project; Notice of Availability of the Draft Environmental Impact Statement for the Santee Cooper Hydroelectric Project and Intention To Hold Public Meeting

March 23, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Santee Cooper Hydroelectric Project, and have prepared a draft environmental impact statement (DEIS) for the project which is located on the Santee and Cooper Rivers in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumpter Counties, South Carolina.

The DEIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Santee Cooper Hydroelectric Project. The DEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the DEIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All Comments must be filed within 60 days of the date of this notice, and should reference the Santee Cooper Hydroelectric Project, Project No. 199–205. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly

encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this DEIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the DEIS. The time and place of the meeting is as follows:

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Address: 505 R.C. Dennis Blvd., Moncks Corner, SC.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public records for the project. This meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/Eventslist.aspx* along with other related information.

For further information, please contact Monte TerHaar at (202) 502–6035 or at *monte.terhaar@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5768 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

March 22, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI07–5–000.

c. *Date Filed:* February 28, 2007.

d. *Applicant:* Fishhook Renewable Energy, LLC.

e. *Name of Project:* Fishhook Creek Hydroelectric Project.

f. *Location:* The proposed Fishhook Creek Hydroelectric Project will be located on Fishhook Creek, tributary to the Little Susitna River, near the towns of Palmer and Wasilla, Alaska, affecting T. 19 N., R. 1 E, secs. 3, 10, 11 and 14, Seward Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Daniel Hertrich, 1503 W. 33rd Avenue, #310, Anchorage, AK 99503; telephone: (907) 258–2420, fax: (907) 258–2419; e-mail: *daniel.hertrich@polarconsult.net*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments, protests, and/or motions:* April 23, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.* Please include the docket number (DI07–5–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Fishhook Creek Hydroelectric Project would include: (1) A four-foot-high diversion structure, with a buried desander box; (2) a 24-inch-diameter, 7,900-foot-long penstock; (3) a powerhouse containing a 1.7-MW impulse turbine and synchronous generator; (4) a 2,900-foot-long buried transmission line, connected to an existing power grid; and (5) appurtenant facilities. The project will not occupy any tribal or federal lands

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5695 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

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[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Shoreline Management Plan and Soliciting Comments, Motions To Intervene and Protests

March 22, 2007.

a. *Type of Application:* Application to amend the shoreline management plan to change land classifications.

b. *Project Number:* P–1417–198.

c. *Date Filed:* February 12, 2007.

d. *Applicant:* Central Nebraska Public Power and Irrigation District.

e. *Name of Project:* Kingsley Dam Hydroelectric Project No. 1417.

f. *Location:* The project is located on the Platte and North Platte Rivers in Keith, Adams, Gosper, Phelps, Lincoln, Dawson, and Kearney Counties, Nebraska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Michael Drain, Natural Resources Manager, Central Nebraska Public Power and Irrigation District, 415 Lincoln S., P.O. Box 740, Hodrege, NE 68949, telephone (308) 995–8601.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and or motions:* April 23, 2007.

k. *Description of Request:* Central Nebraska Public Power and Irrigation District proposes to change the classification of shoreline lands along Plum Creek Canyon Reservoir from open-space/pasture to residential. The proposed change will correct errors in the initial land classification, and accommodate ongoing development of a pre-existing subdivision and new subdivision outside of the project boundary. The areas proposed for reclassification are located along the east and southeast shoreline. The amendment proposal was developed after consultation with the U.S. Fish and Wildlife Service, Nebraska Game and Parks Commission, and Dawson and Gosper Counties.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p–1417) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–1417–198). All documents (original and eight copies) should be filed with: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5696 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 22, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–536.

c. *Date Filed:* February 14, 2006.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Carolinas, LLC, P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and or motions:* April 10, 2007.

k. *Description of Request:* Duke Energy Carolinas, LLC is seeking Commission approval to lease 2.86 acres of project lands on Lake Rhodhiss in Burke County to Paradise Harbor, LLC for the construction of a commercial/residential marina which would consist of two leased areas with thirteen cluster docks and 171 boat docking locations.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling

(202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable. Please include the project number (P–2232–536) on any comments or motions filed. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5698 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659–014]

Crisp County Power Commission; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, Final Recommendations, Terms and Conditions, and Prescriptions

March 22, 2007.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 659–014.

c. *Date filed:* August 3, 2006.

d. *Applicant:* Crisp County Power Commission.

e. *Name of Project:* Lake Blackshear Hydroelectric Project.

f. *Location:* On the Flint River in Worth, Lee, Sumter, Dooly, and Crisp Counties, near Cordele, Georgia. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Steve Rentfrow, General Manager, Crisp County Power Commission, 202 South 7th Street, Cordele, GA 31015, Phone: 229–273–3811.

i. *FERC Contact:* Allyson Conner at (202) 502–6082, or *allyson.conner@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. *Description of Project:* The Lake Blackshear Project is located on the Flint River at river mile 134.7. The project includes the following constructed facilities: (1) A 4,462-foot-long dam consisting of (a) a 3,410-foot-long, 30-foot-maximum height north embankment with a crest elevation of 247.0 feet mean sea level (msl) and containing a 630-foot-long concrete auxiliary spillway section with a crest elevation of 238.0 feet msl, (b) a 402-foot-long, 46-foot-maximum height gated spillway with fourteen 25-foot-wide by 17-foot-high Tainter gates, (c) a 150-foot-long, 77-foot-wide, 49-foot-high combined powerhouse and intake section integral with the dam, containing one Francis fixed-blade propeller turbine, two vertical shaft propeller turbines, and one vertical shaft Kaplan turbine each coupled to generating units with a total generating capacity of 15.2 megawatts, and (d) a 650-foot-long, 30-foot-high south embankment, with the crest at elevation 247.5 feet msl; (2) an 8,700-acre reservoir at a normal maximum water surface elevation of 237.0 feet msl, with 34,800 acre-feet of usable storage; and (3) appurtenant facilities. The average annual generation is estimated to be about 47,414 megawatt-hours. The applicant has no plans to modify existing project facilities or operations.

m. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. A license applicant must file, no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5699 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

March 23, 2007.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12455–003.

c. *Dated Filed:* September 1, 2006.

d. *Submitted by:* Borough of Leighton, Pennsylvania.

e. *Name of Project:* Beltzville Hydroelectric Project.

f. *Location:* The project would be connected to the U.S. Army Corps of Engineers Beltzville Dam, located on Pohopoco Creek, in the Borough of Leighton, Carbon County, Pennsylvania.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Mr. John F. Hanosek, P.E., Borough Manager, P.O. Box 29, Municipal Building, Second and South Street, Leighton, PA 18235, (610) 377–4002.

i. *FERC Contact:* Jack Hannula, (202) 502–8917 or *john.hannula@ferc.gov.*

j. The Borough of Leighton, Pennsylvania filed its request to use the Traditional Licensing Process on August 31, 2006. The Borough of Leighton, Pennsylvania filed public notice of its request on September 19, 2006. In a letter dated October 27, 2006, the Director of the Office of Energy Projects approved the Borough of Leighton, Pennsylvania's request to use the Traditional Licensing Process.

k. The Borough of Leighton, Pennsylvania filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

l. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5762 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 23, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12760–000.

c. *Date filed:* December 28, 2006 and amended on February 22, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* Mississippi 5 Project.

f. *Location:* The project would be located at the U.S. Army Corps of Engineers' existing Arkabutla Reservoir Dam, on the Yazoo River, in DeSoto and Tate Counties, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. James H. Hancock, Jr., Batch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2014, (205) 226–3418. Mr. James R. Kunkel, PhD, P.E., Knight Piesold and Co., 1050 Seventeenth Street, Suite 450, Denver, CO 80265, (303) 629–8788.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Arkabutla Dam, reservoir and all appurtenant

facilities. The proposed project would consist of: (1) Two developments, Development 1, containing (1) a powerhouse with two turbines and generators with a total capacity of 2,962 kW, and (2) a new 72-inch-diameter, 1,000 to 2,000-foot-long, penstock, and (3) Development 2, containing multiple hydrokinetic turbines located in the outlet channel of Arkbutla Dam immediately below the discharge point of Development 1, and (4) a 69 Kv transmission line, 500 to 1500-foot-long, connecting the development to the switch yard; (5) a switch yard; and (6) a new 69 Kv transmission line, one-to-five miles-long, routed to the local utility. The project would have an estimated average annual generation of 13 gigawatt-hours.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5763 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 23, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12761–000.

c. *Date filed:* December 28, 2006 and amended on February 22, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* Mississippi 3 Project.

f. *Location:* The project would be located at the U.S. Army Corps of Engineers' existing Grenada Reservoir Dam, on the Yalobusha River, in Grenada, Yalobusha, and Calhoun Counties, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. James H. Hancock, Jr., Batch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2014, (205) 226–3418. Mr. James R. Kunkel, PhD, P.E., Knight Piesold and Co., 1050 Seventeenth Street, Suite 450, Denver, CO 80265, (303) 629–8788.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Grenada Dam, reservoir, and all appurtenant facilities. The proposed project would consist of: (1) Two developments: Development 1, consisting of (1) a powerhouse containing two turbines and generators with a total capacity of 23,038 kW, and (2) a new 72-inch-diameter, 1,000 to 2,000-foot-long, penstock; and (3) Development 2, containing multiple hydrokinetic turbines located in the outlet channel of Grenada Dam immediately below the discharge point of Development 1, and (4) a 69 Kv transmission line, 500 to 1500-foot-long, connecting the development to the switch yard; (5) a switch yard; and (6) a new 69 Kv transmission line, one to five miles-long, routed to the local utility. The project would have an estimated average annual generation of 101 gigawatt-hours.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a) (1) (iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5764 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 23, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12762–000.

c. *Date filed:* December 28, 2006 and amended on February 22, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* Mississippi 1 Project.

f. *Location:* The project would be located at the U.S. Army Corps of Engineers' existing Sardis Reservoir Dam, on the Tallahatchie River, in Panola County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. James H. Hancock, Jr., Batch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2014, (205) 226–3418. Mr. James R. Kunkel, PhD, P.E., Knight Piesold and Co., 1050 Seventeenth Street, Suite 450, Denver, CO 80265, (303) 629–8788.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Sardis Dam, reservoir, and all appurtenant facilities. The proposed project would consist of: (1) four developments: Development 1, consisting of (1) A powerhouse containing two turbines and generators with a total capacity of 46,080 kW, and (2) a new 72-inch-diameter, 1,000 to 2,000-foot-long, penstock; (3) Development 2, containing multiple hydrokinetic turbines located in the outlet channel of Sardis Dam immediately below the discharge point of Development 1; (4) Development 3, consisting of a turbine and generator with a capacity of 250 kW attached to a new 12-inch-diameter, 50 to 100-foot-long, penstock; (5) Development 4, consisting of multiple hydrokinetic turbines connected to the switch yard by separate transmission lines of approximately 500 to 10,000-foot-long; (6) a switch yard, and (7) a 69 Kv transmission line, one to five miles long to connect the four developments to the power grid. The project would have an estimated average annual generation of 124 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5765 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 23, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12763–000.

c. *Date filed:* December 28, 2006 and amended on February 22, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* Mississippi 2 Project.

f. *Location:* The project would be located at the U.S. Army Corps of Engineers' existing Enid Reservoir Dam, on the Yocona tributary, Tallahatchie River, in Yalobusha, Panola, and Lafayette Counties, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. James H. Hancock, Jr., Batch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2014, (205) 226–3418. Mr. James R. Kunkel, PhD, P.E., Knight Piesold and Co., 1050 Seventeenth Street, Suite 450, Denver, CO 80265, (303) 629–8788.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Enid Dam, reservoir, and all appurtenant facilities. The proposed project would consist of: (1) Two developments: Development 1, consisting of (1) a powerhouse containing two turbines and generators with a total capacity of 19,746 kW, and (2) a new 72-inch-diameter, 1,000 to 2,000-foot-long, penstock; (3) Development 2, containing multiple hydrokinetic turbines located in the outlet channel of Enid Dam immediately below the discharge point of Development 1; (4) a switch yard; and (5) a 69 Kv transmission line, approximately one to five miles long, connecting the two developments to the power grid. The project would have an estimated average annual generation of 86 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing

the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5766 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

March 23, 2007.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12771–000.

c. *Dated Filed:* February 5, 2007.

d. *Submitted By:* Great Bear Hydropower, Inc.

e. *Name of Project:* Upper Falls Hydroelectric Project.

f. *Location:* The project would be located at the existing Riverside and Kendrick-Davis Dams on the Mascoma River in Grafton County, New Hampshire. The project would not occupy United States lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Mr. Terry McDonnell, President, Great Bear Hydropower, Inc., 15 Brigham Hill Road, Norwich, VT 05055, (802) 649–9099.

i. *FERC Contact:* John Ramer, (202) 502–8969 or *john.ramer@ferc.gov.*

j. Great Bear Hydropower, Inc. filed its request to use the Traditional Licensing Process on February 5, 2007. Great Bear Hydropower, Inc. filed public notice of its request on February 20, 2007. In a letter dated March 16, 2007, the Director of the Office of Energy Projects approved Great Bear Hydropower, Inc.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act; and (b) the New Hampshire State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Great Bear Hydropower, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC Online Support at FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Philis Posey,

Acting Secretary.

[FR Doc. E7–5767 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Termination of License by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

March 23, 2007.

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 9300–017.

c. *Date Initiated:* March 21, 2007.

d. *Licensee:* The licensee is James Lichoulas Jr.

e. *Name and Location of Project:* The constructed 346-kilowatt Appleton Trust Project is located on the Hamilton Canal in Middlesex County, Massachusetts.

f. *Filed Pursuant to:* 18 CFR 6.4.

g. *Licensee Contact Information:* Mr. James Lichoulas, Jr., 57 Mill Street, Woburn, MA 01801.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* April 23, 2007.

All documents (original and eight copies) should be filed with Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–9300–017) on any documents or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities:* The constructed project consists of the following existing facilities: (1) An intake off the Hamilton Canal; (2) two 11-foot-wide and 160-foot-long open masonry flumes; (3) an 11-foot-wide and 20-foot-long steel penstock which funnels the water into; (4) an existing turbine chamber which contains two turbine-generators with an installed capacity of 346 kW; (5) two stone masonry tailraces; (6) 480-volt generator leads; (7) a 0.48/13.8-kV transformer; (8) a 300-foot-long, 480-volt underground cable; and (9) appurtenant facilities.

k. *Description of Proceeding:* 18 CFR 6.4 of the Commission's regulations provides, among other things, that it is deemed to be the intent of a licensee to surrender a license, if the licensee abandons a project for a period of three years.

A license for the Appleton Trust Project was issued by Order Issuing License (Minor Project) on July 18, 1986 (36 FERC ¶ 62,047). The project has not operated regularly since November 1994 and the licensee, James Lichoulas, Jr., has not made necessary repairs to resume operations. By letter of March 17, 2003, the Commission's Division of

Dam Safety and Inspections, New York Regional Office directed the licensee to resume project operation by May 30, 2003, and to provide a status report to that office by June 15, 2003. The licensee did not comply. By letter of September 23, 2004, Commission staff informed the licensee that the project was considered abandoned and that the Commission may terminate the license for the project under an implied surrender proceeding. In this letter, the licensee was given the opportunity to voluntarily surrender the license.

On December 6, 2004, the licensee filed a response to Commission staff's September 23, 2004 letter, stating that the reason repairs had not been done at the project was that the Appleton Mills area had been undergoing a major selective demolition of 400,000 of its 600,000 square feet and that an asbestos removal and clean up process had gone on for several years. In the December 6, 2004 filing, the licensee stated that necessary planning was underway for the reconstruction of the equipment and wheelhouse. The licensee further stated that it was his plan to develop a full scope of work by early March 2005 and that he would forward an outline of the scope with a full timeline projection to the Commission. However, a scope of work was never filed. On July 26, 2006, the City of Lowell, Massachusetts (City) filed a letter with the Commission stating that the City had acquired the parcel of land on which the licensed Appleton Trust Project is located.

To date, the licensee has not made the necessary repairs to resume operations at the project and the project is hereby considered abandoned.

l. *Location of the Order:* A copy of the order is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the proceeding.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', and ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', as applicable, and the Project Number of the proceeding. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5771 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–7–000]

Conference on Competition in Wholesale Power Markets; Notice of Conference

March 23, 2007.

Take notice that on May 8, 2007, a second conference will be held at the Federal Energy Regulatory Commission (Commission or FERC) to examine the state of competition in wholesale power markets. This second conference will be held from 9 a.m. to 4 p.m. (EST) at the Federal Energy Regulatory Commission's offices, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend. A further notice with a detailed agenda will be issued in advance of the conference.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

A free webcast of this event will be available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Clara Brooks, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8357, *Clara.Brooks@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5755 Filed 3–28–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8293–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed

by Sierra Club in the United States District Court for the Northern District of California San Francisco Division: *Sierra Club* v. *EPA,* No. C 06–5288 MHP (N.D. CA). On August 29, 2006, Sierra Club filed a complaint claiming that EPA had failed to perform a non-discretionary duty under CAA section 111(b) to review and, if appropriate, revise the new source performance standards (''NSPS'') for new and modified Portland cement plants (Subpart F). Under the terms of the proposed consent decree, or before May 31, 2008, the appropriate EPA official shall sign, and within 10 business days of signing, forward to the **Federal Register** for publication one or a combination of the following: (a) A proposed rule revising the NSPS Subpart F, and/or (b) a proposed and/or final determination not to revise NSPS Subpart F. On or before May 31, 2009, the appropriate EPA official shall sign, and within 10 business days of signing, forward to the **Federal Register** for publication, one or a combination of the following: (a) A final rule revising the NSPS Subpart F; and/or (b) a final determination not to revise NSPS Subpart F.

DATES: Written comments on the proposed consent decree must be received by April 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0230, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Elliott Zenick, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1822; fax number (202) 564–5603; e-mail address: *zenick.elliott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Under the terms of the proposed consent decree, on or before May 31, 2008, the appropriate EPA official shall sign, and within 10 business days of signing, forward to the **Federal Register** for publication one or a combination of the following: (a) A proposed rule revising the NSPS Subpart F, and/or (b) a proposed and/or final determination not to revise NSPS Subpart F. On or before May 31, 2009, the appropriate EPA official shall sign, and within 10 business days of signing, forward to the **Federal Register** for publication, one or a combination of the following: (a) A final rule revising the NSPS Subpart F; and/or (b) a final determination not to revise NSPS Subpart F.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2007–0230 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method

for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 22, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–5799 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2007–0239; FRL–8293–7]

A Screening Assessment of the Potential Impacts of Climate Change on Combined Sewer Overflow (CSO) Mitigation in the Great Lakes and New England Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''A Screening Assessment of the Potential Impacts of Climate Change on Combined Sewer Overflow (CSO) Mitigation in the Great Lakes and New England Regions'' (EPA/600/R–07/033A). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins March 29, 2007, and ends April 28, 2007. Technical comments should be in writing and must be received by EPA by April 28, 2007.

ADDRESSES: The draft ''A Screening Assessment of the Potential Impacts of Climate Change on Combined Sewer Overflow (CSO) Mitigation in the Great Lakes and New England Regions'' is available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from NCEA's Technical Information Staff (telephone: 202–564–3261, facsimile: 202–565–0050). If you are requesting a paper copy, please provide your name, your mailing address, and the document title.

Comments may be submitted electronically at *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Thomas Johnson, NCEA; telephone: 202–564–3406; facsimile: 202–564–2018; or e-mail: *Johnson.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This report describes the potential scope and magnitude of climate change impacts on combined sewer overflow (CSO) events mitigation efforts in the Great Lakes Region and New England Region. The report describes the extent to which CSO long-term control plans may be under-designed if planners assume that past precipitation conditions are representative of future conditions. Combined sewer systems (CSSs) collect and co-treat stormwater and municipal wastewater. During high-intensity rainfall events, the capacity of CSSs can be exceeded resulting in the discharge of untreated storm water and wastewater directly into receiving streams. These CSO events can result in high concentrations of microbial pathogens, biochemical oxygen demand, suspended solids, and other pollutants in receiving waters. Climate change in many parts of the country is expected to increase the proportion of rainfall occurring in high-intensity events, resulting in increased stormwater runoff. Climate change could thus present a risk of increased CSO frequency and resulting water quality impairment.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0239 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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 Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0239. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 26, 2007.

David Bussard,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–5803 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8293–3]

EPA Science Advisory Board Staff Office; Request for Nominations of Experts for the Acrylamide Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Requesting the nomination of experts for the Science Advisory Board (SAB) Acrylamide Review Panel.

DATES: Nominations should be submitted by April 19, 2007, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9977; by fax at (202) 233–0643; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web Site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: Acrylamide polymer is primarily used in waste water treatment, paper and pulp processing, and mineral processing. Other uses include as a water soluble polymer in crude oil production, as a cosmetic additive, for soil and sand stabilization, grouting agents for sewer line sealing and manhole sealing, and in electrophoresis gels used in research. Acrylamide has been detected in a wide range of baked and fried foods. The detection of acrylamide in food prompted intense international interest and on-going research to better characterize its hazard effects, and to modify cooking practices to minimize levels in processed foods. EPA's National Center for Environmental Assessment, within the Office of Research and Development, has been updating the human health hazard and dose-response assessment for Acrylamide. EPA previously developed an oral reference dose (RfD) for non-cancer effects and a cancer oral slope factor for Acrylamide which are described in EPA's Integrated Risk Information System (IRIS) assessment (1988). An inhalation reference concentration (RfC) was added to IRIS in 1990. The current EPA draft assessment incorporates more recent studies and methods to derive an oral RfD and inhalation RfC for non-cancer effects, and an oral slope factor and inhalation unit risk for carcinogenic effects. ORD has requested that the Science Advisory Board (SAB) review its draft assessment entitled ''Toxicological Review of Acrylamide''.

The EPA Science Advisory Board (SAB) was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB Acrylamide Review Panel, conducting the review of the Agency's draft assessment of acrylamide, will consist of members of the chartered SAB, SAB Committee members and additional external experts. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Upon completion, the panel's report will be submitted to the chartered SAB for final approval for transmittal to the EPA Administrator. The SAB Acrylamide Review Panel is being asked to comment on the scientific soundness of this draft assessment.

Availability of the Review Materials: The EPA draft document to be reviewed by the SAB Panel will be made available by the Office of Research and Development. For questions and information concerning the review materials, please contact Dr. Rob Dewoskin, at (919) 541–1089, or *dewoskin.rob@epa.gov.*

Request for Nominations: The SAB Staff Office is requesting nominations of nationally recognized experts with expertise in one or more of the following areas, especially with respect to the health effects of Acrylamide: neurotoxicology; epidemiology; toxicology, including reproductive/developmental toxicology, genetic toxicology and mechanisms of action for carcinogenicity; metabolism; pharmacokinetics and modeling; dose-response assessment; and exposure and risk assessment.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for possible service on the Acrylamide Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Web site at the following URL: *http://www.epa.gov/sab*; or directly via the Form for Nominating Individuals to Panels of the EPA Science Advisory Board link found at URL: *http://www.epa.gov/sab/panels/paneltopics.html.* Please follow the instructions for submitting nominations carefully. To be considered, nominations should include all of the information required on the associated forms. Anyone unable to submit nominations using the electronic form and who has any questions concerning the nomination process may contact Dr. Suhair Shallal, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than April 19, 2007.

For nominees to be considered, please include: contact information; a curriculum vitae; a biosketch of no more than two paragraphs (containing information on the nominee's current position, educational background, areas of expertise and research activities, service on other advisory committees and professional societies; the candidate's special expertise related to the panel being formed; and sources of recent grant and/or contract support).

The EPA SAB Staff Office will acknowledge receipt of nominations.

The names and biosketchs of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the SAB Web Site at: *http://www.epa.gov/sab.* Public comments on this ''Short List'' of candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the final Acrylamide Review Panel (ARP), the SAB Staff Office will consider public comments on the ''Short List'' of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, etc.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board (EPA–SAB–EC–02–010), which is posted on the SAB Web Site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: March 21, 2007

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–5810 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–0148; FRL–8120–8]

Commodity-Grade Mercury: Notice of Stakeholder Panel Process, Notice of Public Meeting, and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, in conjunction with other Federal agencies and offices, is announcing a stakeholder panel process to provide approaches for management of non-Federal supplies of commodity-grade mercury. The need for management arises from concern that some mercury supplies may ultimately be released into the environment, resulting in human exposure with the potential to cause adverse health effects. A stakeholder panel will hold a series of meetings with the kickoff meeting in Washington, DC on May 8, 2007. EPA invites the public to submit written comments to the EPA on the issues the stakeholder panel will address. Stakeholder panel meetings will be open to the public and there will be opportunity for public comment at each meeting. Information on the public meetings will be available at *http://www.epa.gov/mercury/roadmap.htm.*

DATES: *Meeting*: The first meeting will be held on May 8, 2007, from 9 a.m. to 5 p.m., in Washington, DC. Dates of future meetings will be announced on *http://www.epa.gov/mercury/roadmap.htm.*

Participation: Requests to participate in the meeting must be received on or before April 12, 2007. See also Unit IV. of the **SUPPLEMENTARY INFORMATION**.

Special Accommodations: To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Comments: Comments must be received on or before September 30, 2007.

ADDRESSES: *Meeting*: The first meeting will be held at Marriott Learning Complex, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW. (Federal Triangle), Washington, DC.

Participation: Requests to participate in the meeting must be sent to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. See also Unit IV. of the **SUPPLEMENTARY INFORMATION**.

Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0148, 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–0148. 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–2007–0148. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is

placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joshua Novikoff, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0502; e-mail address: *novikoff.joshua@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if your work involves commodity-grade mercury, mercury by-products, or mercury waste. Potentially affected entities may include, but are not limited to:

- Chlor-alkali manufacturers (NAICS code 325181), e.g. facilities that use mercury processes.
- Metals mining companies (NAICS code 2122), e.g. gold mines.
- Mercury recovery facilities (NAICS code 562920), i.e., facilities that recover elemental mercury from waste.
- Waste Treatment and Disposal (NAICS code 5622), e.g. treatment, storage, and disposal facilities that manage hazardous mercury waste.
- Public Administration (NAICS code 92), e.g. State and local agencies responsible for municipal waste.

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency is asking you to respond to specific questions.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

In *EPA's Roadmap for Mercury* (July 2006), EPA committed to working with other Federal agencies to initiate a process with technical experts and interested parties to assess options for managing domestic elemental, commodity-grade mercury surpluses. In order to meet this commitment, a stakeholder process has been established to provide the Federal Government with input on a reasonable range of options and an assessment of these options. The options will apply to the commodity-grade mercury in the United States not held by the Federal Government.

The stakeholder panel process is supported by EPA and its Federal partners: Department of Commerce, Department of Defense, Department of Energy, Department of the Interior, Department of State, and the Executive Office of the President (Office of Management and Budget, Council on Environmental Quality, Office of Science and Technology Policy, and Office of the U.S. Trade Representative). The stakeholder panel will consist of a balanced mix of representatives from academia, industry (e.g., chlor-alkali, mining, mercury brokers), non-governmental organizations (NGOs), and States. Representatives from various

Federal agencies will serve as technical advisors, and will provide background information and technical support to the stakeholder panel as needed. Composition of the stakeholder panel may vary somewhat by meeting, depending on which topics will be discussed. This notice is not a solicitation for stakeholder panel participants.

EPA anticipates that the stakeholder panel will meet on several occasions over a 6–month period. The meetings will be open to the public, with opportunities for the public to make oral comments to the stakeholder panel.

EPA will ask the stakeholder panel to consider two questions:

1. How should the various non-Federal stocks of commodity-grade mercury be managed both in the short term and the long term?

2. How do current and future supply and demand affect this determination for each of the various stocks?

For more information, see the EPA background paper, entitled *Options for Managing U.S. Non-Federal Supplies of Commodity-Grade Mercury*. To access the background paper, see **ADDRESSES**.

III. Issues for Public Comment

EPA invites the public to send written comments on the same two questions addressed to the stakeholder panel:

1. How should the various non-Federal stocks of commodity-grade mercury be managed both in the short term and the long term?

2. How do current and future supply and demand affect this determination for each of the various stocks?

EPA advises commenters to use the background paper as they prepare comments. The background paper is entitled *Options for Managing U.S. Non-Federal Supplies of Commodity-Grade Mercury*. To access the background paper, see **ADDRESSES**.

IV. How Can I Request to Participate in the Meeting?

Persons interested in attending the public meeting are encouraged to pre-register and state whether they intend to make an oral comment. Pre-registration assists in planning adequate seating and in securing access to the building. Oral comments should address the two questions in the charge to the stakeholder panel which are found in Unit II. To pre-register, provide your name, organization, telephone number, and the docket ID number EPA–HQ–OPPT–2007–0148 to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Pre-registration requests must be received on or before April 12, 2007. Do not submit any information in your pre-registration that is considered CBI.

Oral comments will be scheduled in the order the requests are received by EPA. EPA may need to limit the length of oral comments to allow for participation by all parties.

EPA requests that oral comments be included in the docket. Please follow the instructions under **ADDRESSES**.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Mercury.

Dated: March 22, 2007.

Wendy C. Hamnett,

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

[FR Doc. E7–5813 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2007–0240; FRL–8293–8]

A Screening Assessment of the Potential Impacts of Climate Change on the Costs of Implementing Water Quality-Based Effluent Limits at Publicly Owned Treatment Works in the Great Lakes Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''A Screening Assessment of the Potential Impacts of Climate Change on the Costs of Implementing Water Quality-Based Effluent Limits at Publicly-Owned Treatment Works in the Great Lakes Region'' (EPA/600/R–07/034A). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins March 29, 2007, and ends April 28, 2007. Technical comments should be in writing and must be received by EPA by April 28, 2007.

ADDRESSES: The draft ''A Screening Assessment of the Potential Impacts of Climate Change on the Costs of Implementing Water Quality-Based Effluent Limits at Publicly-Owned Treatment Works in the Great Lakes Region'' is available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from NCEA's Technical Information Staff (telephone: 202–564–3261, facsimile: 202–565–0050). If you are requesting a paper copy, please provide your name, your mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Thomas Johnson, NCEA; telephone: 202–564–3406; facsimile: 202–564–2018; or e-mail: *Johnson.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This report describes the potential scope and magnitude of climate change impacts on the cost of meeting water quality based effluent limits at publicly owned treatment works (POTWs) discharging to rivers and streams in the Great Lakes Region (GLR). The report is a screening level analysis focusing on costs of meeting water quality based effluent limits for a single pollutant, biochemical oxygen demand at all POTWs in the region discharging to currently impaired stream reaches. POTWs discharge billions of gallons of effluent daily to receiving water bodies throughout the United States. One of the principal pollutants associated with POTW effluent is organic matter. Naturally, occurring microbial populations in receiving waters consume dissolved oxygen (DO) as they decompose organic matter. Low DO is a significant source of water quality impairment. Climate change in many parts of the country is expected to increase the proportion of rainfall

occurring in high-intensity events, resulting in increased stormwater runoff. At the same time, a shift towards more intense storms is expected to decrease infiltration and groundwater recharge, resulting in reduced low-flow periods between events. Increased air temperatures and evapotranspiration could also result in reduced streamflow between rainfall events. Reduced low-flow events in receiving waters could result in increased water quality impairment below POTWs due to reduced dilution of effluent.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0240 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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 Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0240 Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 26, 2007.

David Bussard,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–5798 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2007–0241; FRL–8293–6]

Draft Toxicological Review of Nitrobenzene (CASRN 98–95–3): In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of External Peer-Review Panel Meeting and Public Comment Period.

SUMMARY: EPA is announcing that the Oak Ridge Institute of Science and Education (ORISE), under an agreement between the Department of Energy and EPA, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of Nitrobenzene: In Support of Summary Information in the Integrated Risk Information System (IRIS).'' The EPA also is announcing a public comment period for the external review draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to ORISE for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. ORISE invites the public to register to attend this workshop as observers. In addition, ORISE invites the public to give brief oral comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA's) home page under the Recent Additions and the Publications menus at *http://www.epa.gov/ncea.* When finalizing the draft document, EPA will consider ORISE's report of the comments and recommendations from the external peer-review workshop and any public

comments that EPA receives in accordance with this notice.

DATES: The external peer-review panel workshop will begin on May 15, 2007, at 9:00 a.m. and end at 4:00 p.m. The public comment period begins March 29, 2007 and ends April 30, 2007. Technical comments should be in writing and must be received by EPA by April 30, 2007. Comments received from the public by this date will be submitted to the external peer-review panel prior to the workshop.

ADDRESSES: The external peer-review workshop will be held at the American Geophysical Union, 2000 Florida Avenue, Washington, DC. ORISE is organizing, convening, and conducting the peer-review workshop. To attend the workshop and/or provide brief oral comments, you must register by May 1, 2007, via the Internet at *http://www.orau.gov/nitrobenzene.* You may also register by calling ORISE at 865–576–2922, sending a facsimile to 865–241–3168, or sending an e-mail to Margaret Lyday at *Margaret.Lyday@orise.orau.gov*.

The draft document, ''Toxicological Review of Nitrobenzene: In Support of Summary Information in the Integrated Risk Information System (IRIS)'' is available via the Internet on NCEA's home page under the Recent Additions and the Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from NCEA's Technical Information Staff (telephone; 202–564–3261, facsimile 202–565–0050). If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from ORISE.

Comments may be submitted electronically at *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the peer-review workshop, contact Margaret Lyday by mail: Oak Ridge Institute for Science and Education, P.O. Box 117, Oak Ridge, TN 37831–0117; phone: 865–576–2922; facsimile: 865–241–3168; or e-mail: *Margaret.Lyday@orise.orau.gov.*

For information on the public comment period, contact the Office of Environmental Information Docket by phone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

If you have questions about the document, contact Dr. Stedeford, IRIS Staff, National Center for Environmental Assessment, by mail: U.S. EPA (8601D), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; phone: 202–564–2066; facsimile: 202–565–0075; or e-mail: *Stedeford.Todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains information regarding potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public. If you wish to make oral comments during the review, you must pre-register at *http://www.orau.gov/nitrobenze* by May 1, 2007. Space is limited and reservations will be accepted on a first-come, first-served basis.

III. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0241 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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 Public Reading Room is 202–566–1744. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Consult EPA's Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0241. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 26, 2007.

David Bussard,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–5801 Filed 3–28–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 2007.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Australia and New Zealand Banking Group Limited, Melbourne, Australia; to acquire 100 percent of the voting shares of Citizens Bancorp, and thereby indirectly acquire voting shares of Citizens Security Bank (Guam), Inc., both located in Hagatna, Guam.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Layton Park Financial Group, Inc., Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Layton State Bank, Milwaukee, Wisconsin.

In connection with this application, Applicant also has applied to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Lea M. McMullan Trust, Shelbyville, Kentucky; to acquire 100 percent of the voting shares of, and thereby merge with Fort Knox National Bancorp, Inc., Radcliff, Kentucky, and thereby indirectly acquire Fort Knox National Bank, Radcliff, Kentucky.

In connection with this application, Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky, also has applied to acquire 100 percent of the voting shares of Fort Knox National Bancorp, Inc., Radcliff, Kentucky, and thereby indirectly acquire voting shares of Fort Knox National Bank, Radcliff, Kentucky.

Board of Governors of the Federal Reserve System, March 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5794 Filed 3–28–07; 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 April 23, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First Guaranty Bancshares, Inc., Hammond, Louisiana; to acquire 100 percent of the voting shares of Homestead Bancorp, Inc., and thereby indirectly acquire Homestead Bank, both of Ponchatoula, Louisiana, 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, March 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5795 Filed 3–28–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through June 30, 2010 the current OMB clearance for information collection requirements

contained in its Identity Theft Report Definition Rule (''Rule''). That clearance expires on June 30, 2007.

DATES: Comments must be filed by May 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''IDT Report Rule: FTC Matter No. R411002,'' to facilitate the organization of comments. A comment filed in paper form should include this reference 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, Room H–135 (Annex J), 600 Pennsylvania Ave., 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 below. 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.'' [1]

Comments filed in electronic form should be submitted by following the instructions on the Web-based form at *https://secure.commentworks.com/IDTReportRule.* To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/IDTReportRule* weblink. If this notice appears at *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.

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 will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* 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: Requests for additional information should be addressed to Kristin Krause Cohen, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 29, 2007.

The Identity Theft Report Definition Rule, 16 CFR Part 603, was promulgated pursuant to the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'' or the ''Act''), amending the Fair Credit Reporting Act, which established requirements for consumer reporting agencies, creditors, and others to help remedy problems associated with identity theft. Under the Act, an individual can mitigate a number of specific harms resulting from identity theft by providing an identity theft report to consumer reporting agencies and information furnishers. For example, with an identity theft report, an identity theft victim can obtain a seven year fraud alert or seek to block fraudulent information on their credit report. Pursuant to the FACT Act, the Rule defined the term ''identity theft report,'' 16 CFR 603.5, and became effective on December 1, 2004.

Burden statement: Commission staff estimates of paperwork burden for the Act and Rule are based on its knowledge of identity theft trends and an identity theft study report, *Federal Trade Commission—Identity Theft Survey Report* (Survey Report), prepared for the Commission by Synovate, and issued in September 2003.[2] Staff estimates that the average annual paperwork burden for the three-year clearance period sought is 586,000 hours with associated annual labor cost burden of $10.911 million.

To derive the estimated total annual hours burden and the estimated labor cost burden, staff first determined the increase in the number of individuals who obtain identity theft reports as a result of the Identity Theft Report Definition Rule. In its 2004 notice of proposed rulemaking [3] and corresponding submission to OMB, FTC staff estimated that the then-proposed rule would increase by 1.529 million the number of individuals obtaining identity theft reports annually. No provisions in the Rule have been amended since staff's prior submission to OMB. Accordingly, absent additional public information to the contrary, staff will continue to apply that estimate, which is explained below.

The Survey Report indicates that there are 9.91 million individuals victimized by identity theft each year.[4] Twenty-six percent of those individuals, or 2.577 million, contact a local law enforcement agency.[5] Seventy-six percent of the 2.577 million, or 1.958 million, file a police report alleging identity theft.[6] Staff anticipates that, as both individuals and police departments become increasingly aware of the benefits of obtaining an ''identity theft report'' under the Act, the number of individuals who ultimately obtain an identity theft report will likely increase because the Rule facilitates a victim's ability to file a law enforcement report.

The Survey Report indicated that 618,000 victims who contact local law enforcement annually are unable to file

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also 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).

[2] *See* Synovate survey at *http://www.ftc.gov/os/2003/09/synovatereport.pdf.*

[3] 69 FR 23370 (Apr. 28, 2004), at 23375.

[4] Survey Report at 7.

[5] *Id.* at 59. All calculations in this section have been rounded to the nearest thousand.

[6] *Id.*

a police report.[7] Thus, staff estimates that the Rule will enable those victims who previously were unable to file reports with local law enforcement to now file reports with a state or federal law enforcement agency. Second, 4.261 million victims annually contact an information furnisher.[8] Staff estimates, based on its knowledge of identity theft trends, that the Rule will result in an increase of 10%, or 426,000, of these victims obtaining an identity theft report. Third, 646,000 victims do not take any action even though their information was used to open new accounts or to commit other frauds.[9] Staff estimates, based on its knowledge of identity theft trends, that the Rule will likely result in 75%, or 485,000, of these victims obtaining identity theft reports. In sum, staff estimates that the Rule will increase by 1.529 million the number of individuals obtaining identity theft reports (618,000 + 426,000 + 485,000).

Estimated total annual hours burden: 586,000 hours (rounded to the nearest thousand).

In its 2004 notice of proposed rulemaking and corresponding submission to OMB, FTC staff estimated, based on the experience of the Commission's Consumer Response Center, that an individual would spend an average of 5 minutes finding and reviewing filing instructions, 8 minutes filing the law enforcement report with the law enforcement agency, and 5 minutes submitting the law enforcement report and any additional information or documentation to the information furnisher or consumer reporting agency, resulting in an average of 18 minutes for each identity theft report.

Staff now estimates, based on the ongoing experience of the Commission's Consumer Response Center, that an individual will spend 5 minutes finding and reviewing filing instructions, 13 minutes filing the law enforcement report with the law enforcement agency (due to added entry fields), and 5 minutes submitting the law enforcement report and any additional information or documentation to the information furnisher or consumer reporting agency, resulting in an average of 23 minutes for each identity theft report. Thus, the annual information collection burden for the estimated 1.529 million new identity theft reports due to the Rule will be 586,000 hours. [(1.529 million × 23 minutes)/60 minutes]

Estimated labor costs: $10,911,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the Bureau of Labor Statistics survey from June 2005, the average national wage for individuals was $18.62.[10] Applying this average national wage to the 586,000 burden hours results in an estimated $10.911 million labor cost burden on individuals who obtain identity theft reports ($18.62 × 586,000 hours).

Estimated annual non-labor cost burden: $0 or minimal.

Staff believes that the Rule's paperwork burden imposes negligible capital or other non-labor costs, as an identity theft victim is likely to have the necessary supplies and/or equipment already (telephone, computer, paper, envelopes) for purposes of obtaining the identity theft report and submitting it to information furnishers or consumer reporting agencies.

William Blumenthal,

General Counsel.

[FR Doc. E7–5818 Filed 3–28–07; 8:45 am]

BILLING CODE 6750–01–P

[7] *Id.* (24% of the 2.577 million victims who contacted law enforcement did not obtain a copy of a police report).

[8] *Id.* at 50 (43% of all 9.91 million victims contact an information provider).

[9] Based upon staff's analysis of data collected in the survey, these types of victims constitute 20% of the 3.23 million victims each year whose information is used to open new accounts or commit other frauds.

[10] The hourly rates are based on average annual Bureau of Labor Statistics National Compensation Survey data, June 2005 (with 2005 as the most recent whole year information available, and June the focal median point). *http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf* (see Table 1.1).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend the current Office of Management and Budget (''OMB'') clearance for information collection requirements contained in its Contact Lens Rule (''Rule'') from April 30, 2007 through April 30, 2010. The information collection requirements described below will be submitted to OMB for review as required by the Paperwork Reduction Act (''PRA'').

DATES: Comments must be received on or before April 30, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Contact Lens Rule: FTC File No. R411002,'' to facilitate the organization of comments. A comment filed in paper form should include this reference 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 J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because U.S. Postal Mail in the Washington area and at the Commission is subject to lengthy delays due to heightened security precautions, please consider submitting your comments in electronic form, as prescribed below. 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.'' [1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/ContactLensRule/*. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ContactLensRule/* weblink. If this notice appears at *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.

Comments also should be submitted to: Office of Management and Budget, ATTN: Desk Officer for the Federal Trade Commission. Comments should be submitted by 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 will be considered by the Commission and will be available, to the extent practicable, to the public on the FTC Web site at *http://www.ftc.gov*. 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

[1] 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).

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: Requests for additional information should be addressed to Karen Jagielski, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2509.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing the opportunity for public comment while awaiting OMB action on the Commission's request to extend the existing paperwork clearance for the regulations noted herein.

In its first Notice published in the **Federal Register** on December 18, 2006, 71 FR 75754, the FTC sought public comments on its proposal to extend through April 30, 2010 its current OMB clearance for information collection requirements contained in its Rule. The FTC has received no public comments. The FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 30, 2007.

The Rule, 16 CFR part 315, was promulgated by the FTC pursuant to the Fairness to Contact Lens Consumers Act (''FCLCA''), Pub. L. 108–164 (December 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon the completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either: (a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Commission staff estimates the paperwork burden of the FCLCA and Rule based on its knowledge of the eye care industry. Staff believes there will be some burden on individual prescribers to provide contact lens prescriptions, although it involves merely writing a few items of information onto a slip of paper and handing it to the patient, or perhaps mailing or faxing it to a third party. In addition, there will be some recordkeeping burden on contact lens sellers—including retaining prescriptions or records of ''direct communications''—pertaining to each sale of contact lenses to consumers who received their original prescription from a third party prescriber.

Burden Statement

Estimated total annual hours burden: 950,000 hours (rounded to the nearest thousand).

In its 2003 PRA-related **Federal Register** Notice and corresponding submission to OMB, FTC staff estimated that the annual paperwork burden for the various disclosure and recordkeeping requirements under the FCLCA and then-proposed Rule would be approximately 600,000 disclosure hours for contact lens prescribers and approximately 300,000 recordkeeping hours for contact lens sellers, a combined industry total of 900,000 hours.

No provisions in the Rule have been amended since staff's prior submission to OMB. The Rules disclosure and recordkeeping requirements, therefore, remain the same. However, the number of contact lens wearers in the United States has increased to approximately 38 million.[2] Therefore, assuming an annual contact lens exam for each contact lens wearer, 38 million people would receive a copy of their prescription each year under the Rule. At an estimated one minute per prescription, the annual time spent by prescribers complying with the disclosure requirement would be a maximum of 633,333 hours. [(38 million × 1 minute)/60 minutes = 633,333 hours]

As required by the FCLCA, the Rule also imposes two recordkeeping requirements. First, prescribers must document the specific medical reasons for setting a contact lens prescription expiration date shorter than the one-year minimum established by the FCLCA. This burden is likely to be nil because the requirement applies only in cases when the prescriber invokes the medical judgment exception, which is expected to occur infrequently, and prescribers are likely to record this information in the ordinary course of business as part of their patients' medical records. The OMB regulation that implements the PRA defines ''burden'' to exclude any effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(B)(3)(2).

Second, the Rule requires contact lens sellers to maintain certain documents relating to contact lens sales. As noted above, a seller may sell contact lenses only in accordance with a prescription that the seller either (a) has received from the patient or prescriber, or (b) has verified through direct communication with the prescriber. The FCLCA requires sellers to retain prescriptions and records of communications with prescribers relating to prescription verification for three years.

Staff believes that the burden of complying with this requirement is low. Sellers who seek verification of contact lens prescriptions must retain one or two records for each contact lens sale: Either the relevant prescription itself, or the verification request and any response from the prescriber. Staff estimates that such recordkeeping will entail a maximum of five minutes per sale, including time spent preparing a file and actually filing the record(s).

[2] See Statistics on Eyeglasses and Contact Lenses, All About Vision, August, 2006, available at *http://www.allaboutvision.com/resources/statistics-eyewear.htm*. See also Barr, J. ''2004 Annual Report,'' Contact Lens Spectrum, Jan. 2005, available at *http://www.clspectrum.com/article.aspx?article=12733*.

Staff also believes that, based on its knowledge of the industry, this burden will fall primarily on mail order and Internet-based sellers of contact lenses, as they are the entities in the industry most reliant on obtaining or verifying contact lens prescriptions. Based on conversations with the industry, staff estimates that these entities currently account for approximately 10% of sales in the contact lens market [3] and, by extension, that approximately 3.8 million consumers—10% of the 38 million contact lens wearers in the United States—purchase their lenses from them.

At an estimated five minutes per sale to each of 3.8 million consumers, contact lens sellers will spend a total of 316,667 burden hours complying with the recordkeeping requirement. [(3.8 million × 5 minutes)/60 minutes = 316,667 hours] This estimate likely overstates the actual burden, however, because it includes the time spent by sellers who already keep records pertaining to contact lens sales in the ordinary course of business. In addition, the estimate may overstate the time spent by sellers to the extent that records (e.g., verification requests) are generated and stored automatically and electronically, which staff understands is the case for some larger online sellers.

Estimated labor costs: $32,819,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff estimates, based on its knowledge of the industry, that optometrists account for approximately 75% of prescribers. Consequently, for simplicity, staff will focus on their average hourly wage in estimating prescribers' labor cost burden.

According to Bureau of Labor Statistics from May 2005, salaried optometrists earn an average wage of $45.91 per hour and clerical personnel earn an average of $11.82 per hour.[4] With these categories of personnel, respectively, likely to perform the brunt of the disclosure and recordkeeping aspects of the Rule, estimated total labor cost attributable to the Rule would be approximately $32.8 million. [($45.91 × 633,333 hours) + ($11.82 × 316,667 hours) = $32,819,322]

The contact lens market is a multi-billion dollar market; one recent survey estimates that contact lens sales totaled $2.37 billion from Jan 1, 2006 to Dec 31, 2006.[5] Thus, the total labor cost burden estimate of $32.8 million represents approximately 1% of the overall market.

Estimated annual non-labor cost burden: $0 or minimal.

Staff believes that the Rule's disclosure and recordkeeping requirements impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., prescription pads, patients' medical charts, facsimile machines and paper, telephones, and recordkeeping facilities such as filing cabinets or other storage).

William Blumenthal,

General Counsel.

[FR Doc. E7–5819 Filed 3–28–07; 8:45 am]

BILLING CODE 6750–01–P

[3] The FTC's February 2005 study, ''The Strength of Competition in the Rx Sale of Contact Lenses: An FTC Study,'' cites various data that, averaged together, suggests that approximately 10% of contact lens sales are by online and mail-order sellers. The report is available online at *http://www.ftc.gov/reports/contactlens/050214contactlensrpt.pdf.*

[4] Optometrist hourly wages are drawn from the Bureau of Labor Statistics (BLS) Occupational Employment and Statistics Survey, May 2005, based on BLS-sampled data it collected over a 3-year period. See *http://www.bls.gov/news.release/pdf/ocwage.pdf* (Table 1). Relevant clerical hourly rates are unavailable from that survey, however, and are drawn instead from the BLS National Compensation Survey, June 2005 (with 2005 as the most recent whole year information available, and June the focal median point). See *http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf* (Table 1.1).

[5] The Vision Council of America and Jobson Optical Research have conducted large scale continuous consumer research under the name VisionWatch, which reports on the vision care industry. The basis for this statistic is on file with the Federal Trade Commission.

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed routine use; request for public comment.

SUMMARY: The FTC proposes to adopt a new routine use that would permit disclosure of FTC records governed by the Privacy Act when reasonably necessary to respond and prevent, minimize, or remedy harm that may result from an agency data breach or compromise.

DATES: The deadline for public comments is April 30, 2007. Comments received after that date will be considered at the FTC's discretion.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Privacy Act of 1974; System of Records: FTC File No. P072104'' to facilitate the organization of comments. A comment filed in paper form should include this reference 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, Room H–135 (Annex H), 600 Pennsylvania Ave., NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, 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 below. 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.'' [1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/PrivacyAct1974*. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/PrivacyAct1974* weblink. If this notice appears at *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.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this matter as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. 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: Alex Tang, Attorney, FTC, Office of General

[1] 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).

Counsel, 600 Pennsylvania Ave. NW, Washington, DC 20580, 202–326–2447, *atang@ftc.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that the FTC is proposing to adopt a new ''routine use'' that will apply to all FTC records systems covered by the Privacy Act of 1974. The Act applies to agency systems of records about individuals that the agency maintains and retrieves by name or other personal identifier, such as its personnel and payroll systems and certain other FTC records systems. A list of the agency's current Privacy Act records systems can be viewed on the FTC's Web site at: *http://www.ftc.gov/foia/listofpasystems.htm*. The new routine use would be added to Appendix 1, which describes routine uses that apply globally to all FTC Privacy Act records systems. *See* 57 FR 45678 (1992), *http://www.ftc.gov/foia/sysnot/appendix1.pdf*.

This new routine use is needed in order to allow for disclosure of records to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach of data contained in the protected systems. This routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to individuals affected by the breach, in cases, if any, where such disclosure is not otherwise authorized under the Act. This routine use will also authorize disclosures to others who are in a position to assist in response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms from the breach.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected and subject to that Act. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7). The FTC believes that it is consistent with the collection of information pertaining to such individuals to disclose Privacy Act records when, in doing so, it will help prevent, minimize or remedy a data breach or compromise that may affect such individuals. By contrast, the FTC believes that failure to take reasonable steps to help prevent, minimize the harm that may result from such a breach or compromise would jeopardize, rather than promote, the privacy of such individuals. Accordingly, the Commission concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of Privacy Act records for such purposes.

In accordance with the Privacy Act, see 5 U.S.C. 552a(e)(4) and (11), the FTC is publishing notice of this routine use and giving the public a 30-day period to comment before adopting it as final. The FTC is also providing at least 40 days advance notice of this proposed system notice amendment to OMB and the Congress, as required by the Act, 5 U.S.C. 552a(r), and OMB Circular A–130, Revised, Appendix I. We note that the text of this routine use is taken from the routine use that has already been published in final form by the Department of Justice after public comment. *See* 72 FR 3410 (Jan. 25, 2007). Similarly, after taking into account comments, if any, received by the FTC, the FTC intends to publish its proposed routine use as final after the period for OMB and Congressional review is complete, including whatever revisions may be deemed appropriate or necessary, if any.

Accordingly, the FTC hereby proposes to amend Appendix 1 of its Privacy Act system notices, as published at 57 FR 45678, by adding the following new routine use at the end of the existing routine uses set forth in that Appendix:

* * * * *

To appropriate agencies, entities, and persons when (1) the FTC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the FTC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the FTC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FTC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–5821 Filed 3–28–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 14th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 26, 2007, from 1 p.m. to 4 p.m. Eastern Daylight Time.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/chroniccare/*.

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to deploy widely available, secure technologies solutions for remote monitoring and assessment of patients and for communication between clinicians about patients.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.htm*.

Dated: March 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordinator, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–1539 Filed 3–28–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 15th meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup [formerly Biosurveillance Workgroup] in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 20, 2007, from 10 a.m. to 3:30 p.m. Eastern Daylight Time.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Avenue, SW., Washington, DC 20201), Room 505A (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/population/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue deliberation on response management. The meeting will include testimony on Communications, and Countermeasure Allocation, Distribution and Administration tracking during a public health response.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Dated: March 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–1540 Filed 3–28–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 15th meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 18, 2007, from 9:30 a.m. to 1:30 p.m. (Eastern Daylight Time).

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthrecords/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adoption among providers.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.*

Dated: March 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–1541 Filed 3–28–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community Confidentiality, Privacy, and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 12, 2007, from 1 p.m. to 5 p.m. Eastern Daylight Time.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 705A (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/confidentiality/.*

SUPPLEMENTARY INFORMATION: The Workgroup Members will continue discussing its working hypothesis, and its evaluation of the privacy and security protections for participants in an electronic health information exchange network at a local, state, regional, or nationwide level.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: March 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–1542 Filed 3–28–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Chemical Nomination and Selection; Announcement of and Request for Public Comment on Toxicological Study Nominations to the NTP

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Notice; request for comments and additional information.

SUMMARY: The NTP continuously solicits and accepts nominations for toxicological studies to be undertaken by the program. Nominations of substances of potential human health concern are received from federal agencies, the public, and other interested parties. These nominations are subject to several levels of review before selections for testing are made and toxicological studies are designed and implemented. This notice (1) Provides brief background information and preliminary study recommendations regarding nine nominations for study by the NTP (Table 1), (2) solicits public comment on the nominations and study recommendations, and (3) requests the submission of additional relevant information for consideration by the NTP in its continued review of these nominations. An electronic copy of this announcement, supporting documents for each nomination, and further information on the NTP and the NTP Study Nomination and Review Process can be accessed through the NTP Web site (*http://ntp.niehs.nih.gov/*; select ''Nominations to the Testing Program'').

DATES: Comments or information should be submitted by May 10, 2007.

ADDRESSES: Correspondence should be addressed to Dr. Scott A. Masten, Director, Office of Chemical Nomination and Selection, NIEHS/NTP, 111 T.W. Alexander Drive, P.O. Box 12233, Research Triangle Park, North Carolina 27709; telephone: 919–541–5710; FAX: 919–541–3647; e-mail: *masten@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background Information

The NTP actively seeks to identify and select for study chemicals and other substances for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal open nomination and selection process. Nominations can be submitted to the

NTP at *http://ntp.niehs.nih.gov/*; select ''Nominations to the Testing Program'' or by contacting Dr. Scott Masten (see **ADDRESSES** above). Substances considered appropriate for study generally fall into two broad yet overlapping categories: (1) Substances judged to have high concern as possible public health hazards based on the extent of human exposure and/or suspicion of toxicity and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, e.g., by facilitating cross-species extrapolation or evaluating dose-response relationships. Nominations are also solicited for studies that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of classes of chemical, biological, or physical agents.

Study nominations may entail the evaluation of a variety of health-related effects including, but not limited to, reproductive and developmental toxicity, genetic toxicity, immunotoxicity, neurotoxicity, metabolism and disposition, and carcinogenicity in appropriate experimental models. In reviewing and selecting nominations for study, the NTP also considers legislative mandates that require responsible private sector organizations to evaluate their products for health and environmental effects. The possible human health consequences of anticipated or known human exposure, however, remain the over-riding factor in the NTP's decision to study a particular substance.

Nominations undergo a multi-step, formal process of review. Briefly, during the entire nomination review and selection process, the NTP works with staff at other federal agencies and interested parties to supplement information about nominated substances and ensure that regulatory and public health needs are addressed. The nomination review and selection process is accomplished through the participation of representatives from the NIEHS, other federal agencies represented on the Interagency Committee for Chemical Evaluation and Coordination (ICCEC), the NTP Board of Scientific Counselors (BSC)—an external scientific advisory body, the NTP Executive Committee—the NTP federal interagency policy body, and the public. Preliminary study recommendations for each nomination are developed and refined by the nominator, NTP staff, and the ICCEC and may be further refined as the formal review process continues. The NTP considers recommendations from the BSC and the NTP Executive Committee, public comments received on the nominations, and other available information in selecting candidate substances for study. The NTP initiates appropriate toxicology and carcinogenicity studies as time and resources permit.

The nomination review and selection process is described in further detail on the NTP Web site (*http://ntp.niehs.nih.gov/*; select ''Nominations to the Testing Program'').

Request for Comments and Additional Information

The NTP invites interested parties to submit written comments or supplementary information on the nominated substances and study recommendations that appear in Table 1. The NTP welcomes toxicology study information from completed, ongoing, or anticipated studies, as well as information on current U.S. production levels, use or consumption patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is interested in identifying appropriate animal and non-animal experimental models for mechanistic-based research, including genetically modified rodents and high-throughput *in vitro* test methods, and as such, solicits comments regarding the use of specific *in vivo* and *in vitro* experimental approaches to address questions relevant to the nominated substances and issues under consideration. Comments should be submitted by May 10, 2007; however, the NTP welcomes comments or additional information on these study nominations at any time. The NTP will not respond to submitted comments; however, all information received will become part of the official record that the NTP considers in its ongoing review of these nominations. Persons submitting comments should include their name, affiliation, mailing address, phone, fax, e-mail address, and sponsoring organization (if any) with the submission. Written submissions will be made publicly available electronically on the NTP Web site as they are received (*http://ntp.niehs.nih.gov/*; select ''Nominations to the Testing Program'').

Background Information on the NTP Office of Chemical Nomination and Selection

The NTP Office of Chemical Nomination and Selection (OCNS) manages the solicitation, receipt, and review of NTP toxicology study nominations. The OCNS conducts an initial review of each study nomination received to determine whether the substance or issue has been adequately studied or has been previously considered by the NTP. For nominations not eliminated from consideration or deferred at this stage, the OCNS initiates a formal review process, as described above. The OCNS also ensures adequate background information is available to support the review for each nomination and corresponds with interested parties regarding the status of NTP study nominations. For further information on the OCNS visit the NTP Web site (*http://ntp.niehs.nih.gov*; select ''Nominations to the Testing Program'') or contact Dr. Masten (see **ADDRESSES** above).

Dated: March 21, 2007.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

TABLE 1.—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES

Substance [CAS No.]	Nominated by [1]	Nomination rationale	Preliminary study recommendations [2]
Aminopyridines: 2-Aminopyridine [504–29–0], 3-Aminopyridine [462–08–8], 4-Aminopyridine [504–24–5].	NCI	Moderate production and use; acutely toxic; lack of adequate toxicological data; suspicion of toxicity and carcinogenicity based on structure.	—Toxicological characterization including chronic toxicity and carcinogenicity studies for 2-aminopyridine. —Short-term mechanistic studies for 3- and 4-aminopyridine. —Comparative neurotoxicity studies for 2-, 3-, and 4-aminopyridine.

TABLE 1.—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES—Continued

Substance [CAS No.]	Nominated by [1]	Nomination rationale	Preliminary study recommendations [2]
Artificial butter flavoring mixture and certain components: Acetoin [513–86–0], Diacetyl [431–03–8].	United Food and Commercial Workers International Union.	Evidence of lung disease in exposed workers and respiratory toxicity in short-term animal toxicity studies.	—Chronic toxicity and carcinogenicity studies via inhalation in rats. —Mechanistic studies.
Asbestos, naturally occurring and atypical forms [1332–21–4].	National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, U.S. Environmental Protection Agency.	Widespread community exposure in certain geographic locales; insufficient dose-response data to characterize risk from exposure to ''unregulated'' asbestiform mineral fibers and naturally occurring fibrous mineral ''mixtures''.	—Mineral characterization. —*In vitro* durability and toxicity studies. —Subchronic and chronic toxicity/carcinogenicity studies via inhalation. —Studies should utilize test materials representative of minerals identified in Libby, MT and at other Naturally Occurring Asbestos (NOA) sites.
Diethyl phthalate [84–66–2]	National Institute of Environmental Health Sciences.	Widespread consumer exposure through use in cosmetics and personal care products; insufficient toxicity data to assess potential reproductive hazard.	—Multigeneration oral reproductive and developmental toxicity studies —Toxicokinetic studies (oral and dermal routes).
2′,2″-Dithiobisbenzanilide [135–57–9]	NCI	High production volume; potential worker and consumer exposures; lack of adequate toxicological data; suspicion of toxicity based on structure.	—Genotoxicity studies. —Metabolism studies.
2-Methoxy-4-nitroaniline [97–52–9]	NCI	High production volume; potential worker exposures; lack of adequate toxicological data; positive mutagenicity data; strong suspicion of toxicity and carcinogenicity based on structure.	—Toxicological characterization. —Short-term mechanistic studies to predict carcinogenic potential.
Nanoscale materials Nanoscale gold [7440–57–5] Nanoscale silver [7440–22–4].	U.S. Food and Drug Administration.	Widespread and increasing use in drug, food and cosmetic products; lack of adequate toxicological and pharmacokinetic data; need to evaluate whether the current required tests are adequate to detect adverse biological and toxicological events.	—Nanoscale materials characterization. —Metabolism and pharmacokinetic studies. —Acute, subacute and subchronic toxicity studies. —Mechanistic studies to assess the role of size and surface coating on biological disposition and toxicity.
Pentaethylenehexamine [4067–16–7]	NCI	High production volume; potential worker exposures; lack of adequate toxicological data; positive mutagenicity data.	No studies at this time due to the irritant and corrosive nature of this compound.
o-Phthalaldehyde [643–79–8]	National Institute for Occupational Safety and Health.	Widespread and increasing use as a disinfectant in health care settings; lack of adequate and publicly available toxicological data; potential skin and respiratory sensitizer.	—Toxicological characterization including studies to assess dermal irritation, dermal toxicity, and sensitization and asthmagenic potential.

[1] National Cancer Institute (NCI).
[2] The term ''toxicological characterization'' in this table includes studies for genotoxicity, subchronic toxicity, and chronic toxicity/carcinogenicity as determined to be appropriate during the conceptualization and design of a research program to address toxicological data needs. Other types of studies (e.g., metabolism and disposition, immunotoxicity, and reproductive and developmental toxicity) may be conducted as part of a complete toxicological characterization; however, these types of studies are not listed unless they are specifically recommended.

[FR Doc. E7–5831 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1997E–0013]

Determination of Regulatory Review Period for Purposes of Patent Extension; RETEVASE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for RETEVASE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets

Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human biological product RETEVASE (reteplase). RETEVASE is indicated in the management of acute myocardial infarction (AMI) in adults for the improvement of ventricular function following AMI, the reduction of the incidence of congestive heart failure and the reduction of mortality associated with AMI. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RETEVASE (U.S. Patent No. 5,223,256) from Boehringer Mannheim GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 6, 1997, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of RETEVASE represented the first permitted commercial marketing or use of the product. On September 14, 2006, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RETEVASE is 1,919 days. Of this time, 1,430 days occurred during the testing phase of the regulatory review period, while 489 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: August 1, 1991. The applicant claims July 1, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: June 30, 1995. FDA has verified the applicant's claim that the product license application (PLA) for Retevase (PLA 95–1167) was initially submitted on June 30, 1995. The PLA was renumbered as biologics license application (BLA) 103632/0.

3. *The date the application was approved*: October 30, 1996. The applicant claims October 29, 1996, as the date the PLA was approved. However, FDA records indicate that PLA 95–1167 (BLA 103632/0) was approved on October 30, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 123 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 29, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 25, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5736 Filed 3–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0354]

Determination of Regulatory Review Period for Purposes of Patent Extension; VAPRISOL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VAPRISOL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VAPRISOL (conivaptan hydrochloride). VAPRISOL is indicated for treatment of euvolemic hyponatremia in hospitalized patients. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VAPRISOL (U.S. Patent No. 5,723,606) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 5, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VAPRISOL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VAPRISOL is 2,796 days. Of this time, 2,096 days occurred during the testing phase of the regulatory review period, while 700 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 6, 1998. FDA has verified the applicant's claim that the date the Investigational New Drug application became effective was on May 6, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 30, 2004. FDA has verified the applicant's claim that the new drug application (NDA) for VAPRISOL (NDA 21–697) was initially submitted on January 30, 2004.

3. *The date the application was approved*: December 29, 2005. FDA has verified the applicant's claim that NDA 21–697 was approved on December 29, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,745 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 29, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 25, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5737 Filed 3–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0312]

Meeting to Present Work-in-Progress on a Method for Ranking Feed Contaminants According to the Relative Risks They Pose to Animal and Public Health; Part 2: Exposure Scoring for Feed Contaminants; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing the following public meeting: ''Meeting to Present Work-in-Progress on a Method for Ranking Feed Contaminants According to the Relative Risks They Pose to Animal and Public Health; Part 2: Exposure Scoring for Feed Contaminants.'' The topic to be discussed will present work-in-progress on a method for ranking animal feed contaminants by their relative risks to animal and human health. The relative risk posed by feed contaminants to animal and human health consists of two components, namely, health consequence scoring and exposure scoring. At a meeting held in September 2006, the agency presented its current thinking on health consequence scoring. At this public meeting, the agency will describe the methods it plans to use to develop animal and human exposure scoring for chemical, physical, and microbiological feed contaminants. At a subsequent public meeting, FDA will present information on its relative risk-ranking model and how the health consequence scoring and exposure scoring will be combined to determine the relative risks of contaminants in feed.

Date and Time: The public meeting will be held on May 22, 2007, from 9 a.m. to 4 p.m.

Location: The public meeting will be held at the Holiday Inn, 2 Mongomery Village Ave., Gaithersburg, MD 20879.

Contact: *For general information*: Zoe Gill, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl.,

Rockville, MD 20855, 240–453–6867, FAX: 240–453–6882, or e-mail: *zoe.gill@fda.hhs.gov*.

For registration: Nanette Milton, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6840, FAX: 240–453–6880, or e-mail: *nanette.milton@fda.hhs.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person (see *Contact*). To obtain the registration form via the Web site, go to *http://www.fda.gov/cvm/AFSS052007PM.htm*. Due to limited meeting space, registration will be required. We strongly encourage early registration.

If you need special accommodations due to a disability, please contact Nanette Milton (see *Contact*) no later than May 15, 2007.

Comments: Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Electronic comments may be submitted to the docket at the following Web site: *http://www.fda.gov/dockets/ecomments*. Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The docket will remain open for written or electronic comments through June 21, 2007, 30 days following the meeting.

SUPPLEMENTARY INFORMATION:

I. Background

The Animal Feed Safety System (AFSS) is FDA's program for animal feed aimed at protecting human and animal health by ensuring animal feed is safe. It covers the entire spectrum of agency activities from preapproval of food additives and drugs for use in feed, to establishing limits for feed contaminants, providing education and training, conducting inspections, and taking enforcement actions for ensuring compliance with agency regulations. The AFSS includes oversight of all feed ingredients and mixed feed at all stages of manufacture, production, distribution and use, whether at commercial or non-commercial establishments.

During the past several years, FDA has been considering changes that need to be made to the AFSS to ensure that it is comprehensive, preventive and risk-based. As part of this effort, the agency is developing a model for ranking the relative risks to human and animal health from contaminants in animal feed. An effective model will permit the agency to systematically distinguish among feed hazards based on the relative risks they pose to animals or humans. Such a model will consider the risks of hazards present in incoming materials or feed ingredients and will also consider how activities at feed manufacturing, storage, distribution, and transportation facilities may modify such risks. For the purpose of the AFSS, FDA defines a feed hazard as a biological, chemical, or physical agent in, or condition of, feed with the potential to cause an adverse health effect in animals or humans.

Previously, FDA held three public meetings to discuss the AFSS. The first two meetings were held on September 23 and 24, 2003, in Herndon, VA and on April 5 and 6, 2005, in Omaha, NE. These public meetings included active participation by consumers, animal feed processors, animal producers, and State and other Federal government agencies. Following the meetings, we placed a number of documents in FDA's docket for the AFSS project (see docket number found in brackets in the heading of this document). These documents included transcripts of the meetings, summaries of break-out discussion groups, presentations of invited speakers and meeting summaries. We also placed in FDA's docket a number of other documents relating to the AFSS, including a framework for the AFSS that lists the principal components of the AFSS and the gaps the agency has identified which are being addressed by the agency team working on the AFSS project. These documents provided general background material on the AFSS for the third public meeting that was held on September 12, 2006, in Rockville, MD.

The September 2006 meeting was the first of several planned by FDA to discuss aspects of the AFSS relative risk ranking model during the model's development by the agency. In this model, information about the health consequences posed by the hazardous contaminants will be combined with information about exposures to the contaminants in animal feed. At the September 2006 meeting, the agency presented its current thinking on the development of a health consequences scoring system to represent the animal and human health consequences associated with the feed contaminants. The meeting also afforded the opportunity for attendees and agency presenters to have an open discussion concerning the health consequences approach being considered by the agency. The presentations and the transcript of the meeting have been added to the AFSS docket.

At the May 22, 2007, meeting, which will be held in Gaithersburg, MD, FDA will continue its discussions on the development of the AFSS relative risk ranking model by focusing on the exposure component of the model. The exposure scoring system under development intends to address the presence of contaminants in source materials for feed ingredients and those factors in manufacturing and/or processing that may affect the levels of contaminants in final feed formulations. At the May 2007 meeting, the agency will use the production of swine feed as an example exposure scenario to illustrate its approach to exposure assessment.

At one or more subsequent meetings, the agency will present information about how health consequences and exposure are combined to determine the relative risks of contaminants in animal feed and various aspects of the relative risk model developed by the agency.

II. Meeting

We are holding the public meeting in an effort to gather further information from you, our stakeholders, on changes to the AFSS that will help minimize risks to animal and human health associated with animal feed. Prior to the public meeting, FDA will place a document entitled ''Exposure Scoring for Feed Contaminants—A Swine Feed Example'' in the docket found in brackets in the heading of this notice. The document will summarize the agency's methods for determining exposures to physical, chemical, and microbiological contaminants that may be present in swine feed. Details of these methods will be discussed at the meeting. A draft agenda for the meeting will also be placed in the docket prior to the meeting.

Dated: March 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5820 Filed 2–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop to Discuss Development of a Women's Health Information Sharing Network

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration's (FDA's) Office of Women's Health is announcing the following meeting: ''Workshop to Develop a Women's Health Information Sharing Network'' to discuss opportunities for national organizations to share information about their women's health education activities. There will be two meetings. One will focus on Hispanic/Latina populations, and the other will focus on all other communities. Representatives of national community-based organizations are invited. A continental breakfast will be provided.

Date and Time: The meetings will be held on April 12 and 13, 2007, from 8:30 am to 11:30 am.

Location: The meetings will be held at AARP, 601 East St., NW., Washington, DC 20049.

Contact: Susana Perry, FDA Office of Women's Health (HF–8), Food and Drug Administration, 5600 Fishers Lane, rm. 16–65, Rockville, MD 20857, 301–827–0350, FAX: 301–827–9194, e-mail: *susana.perry@fda.hhs.gov*.

Registration: There is no fee, but pre-registration is required for security purposes by AARP. Seating is limited to 20 participants for each meeting.

If you need special accommodations due to a disability, please contact Susana Perry at least 7 days in advance (by April 6, 2007).

Dated: March 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–1546 Filed 3–27–07; 8:50 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Survey of Complementary and Alternative Medicine Use by United States Cancer Patients Comment Period

AGENCY: National Cancer Institute (NCI), National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: The National Survey of Cancer CAM Researchers' Recommendations public comment period will run from May 1, 2007 to June 30, 2007.

ADDRESSES: Comments may be submitted electronically at *http://www.cancer.gov/cam*.

Background: Title: National Survey of Complementary and Alternative Medicine Use by United States Cancer Patients. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* There have been many regional surveys conducted about the use of CAM by cancer patients, but only one national survey which was published in 1992 The NCI is seeking to determine whether it should make an investment in the gathering of current nationally representative data on cancer patients' use of CAM.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether nationally representative data should be obtained on CAM use by U.S. cancer patients; (b) the type of data about CAM use by U.S. cancer patients which should be considered high priority; (c) whether international data on CAM use by cancer patients should be collected; and (d) appropriate uses for any data on CAM use by cancer patients that is collected.

Dated: February 28, 2007.

Shea Buckman,

NCI OCCAM Communications and Outreach Manager, National Institutes of Health.

[FR Doc. E7–5832 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, 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 Heart, Lung and Blood Institute Special Emphasis Panel, Research Project in Drug Therapy.

Date: April 26, 2007.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person:: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1548 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Projects in Longitudinal Studies of HIV.

Date: May 3, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattonh@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Loan Repayment Program (L30).

Date: May 31, 2007.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie L. Prenger, PhD, Chief, Review Branch, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *prengerv@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1550 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

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 Human Genome Research.

Date: May 21–22, 2007.

Open: May 21, 2007, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conferrence Room, Bethesda, MD 20892.

Closed: May 21, 2007, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 22, 2007, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov.*

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.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1547 Filed 3–28–07; 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 a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID. The meeting will be closed to the public as indicated below with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 4–5, 2007.

Time: June 4, 2007, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms, 1227/1233, Bethesda, MD 20892.

Time: June 5, 2007, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy, and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@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: March 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1553 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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: Biomedical Library and Informatics Review Committee.
Date: June 14–15, 2007.
Time: June 14, 2007, 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.
Time: June 15, 2007, 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.
Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1551 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cener for Scientific Review; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular.
Date: April 5, 2007.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships.
Date: May 18, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Developmental Therapeutics Study Section.
Date: May 24–25, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Chemosensory Systems Study Section.
Date: May 30–31, 2007.
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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.306, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1549 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodegenerative Diseases.
Date: April 11, 2007.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Deborah L. Lewis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7846, Bethesda, MD 20892, 391043501162.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts.
Date: April 12–13, 2007.
Time: 7 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group, Transplantation,

Tolerance, and Tumor Immunology Study Section.

Date: May 31–June 1, 2007.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@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: March 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1552 Filed 3–28–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant Application Guidance and Instruction, FY 2008–2010 (OMB No. 0930–0168)—Revisions

Sections 1911 through 1920 of the Public Health Service Act (42 U.S.C. 300x through 300x–9) provide for annual allotments to assist States to establish or expand an organized, community-based system of care for adults with serious mental illnesses and children with serious emotional disturbances. Under these provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary of the Department of Health and Human Services.

For the FY 2008–2010 Community Mental Health Services Block Grant application cycle, SAMHSA will provide States guidance and instructions to guide development of comprehensive State applications/plans and implementation reports. Proposed revisions to the guidance include: (1) The integration of mental health transformation as a guiding principle in the development of State mental health plans. State plans for FY 2008–2010 will describe State mental health transformation efforts and activities within the context of the five (5) legislative criteria, identify mental health transformation activities funded by the MHBG and other State funding sources, identify activities of the State mental health planning council that contribute to and support State transformation efforts, include one State transformation performance indicator in the plan, and include a description of the services provided to older adults under criterion 4 of the State's plan. (2) The introduction of the Web Block Grant Application System (WebBGAS). WebBGAS enables States to submit applications/plans, and implementation reports electronically thus reducing the burden of paperwork required for submission, revision, and reporting purposes. In FY 2008, all States and Territories will be encouraged to submit State plans using WebBGAS. Other advantages to using WebBGAS include:

- Eliminating redundancy in data entry by pre-populating the States' previous year data in the current year's plans and implementation reports.
- Standardizing Mental Health Block Grant data for reporting and quantitative analysis.
- Allowing the States' mental health planning councils to have access to state plans and implementation reports throughout the FY as a means to enable councils to meet their Federal mandate of reviewing the plans and providing recommendations to the State.
- Adhering to the Federal government's e-governments and e-grants initiatives, where applicable.

(3) A requirement for States to report nine CMHS National Outcome Measures (NOMS) for mental health. All nine measures are derived from tables in the Uniform Reporting System (URS) which was developed in collaboration with the States. Four (4) of the nine measures were established, in concert with OMB PART, to support the long-term goals of the Mental Health Block Grant program and SAMHSA's Government Results and Performance Act (GPRA) measures. The nine CMHS measures are:

- Increased access to services.
- Reduced utilization of psychiatric inpatient beds for 30 and 180 days.
- Number of evidenced-based practices and number of persons served in these programs.
- Client perception of care.
- Increased/retained employment or returned to/stayed in school.
- Decreased criminal justice involvement.
- Increased stability in housing.
- Increased social supports and social connectedness, and
- Improved level of functioning.

Two of the NOMS, Increased Social Supports and Social Connectedness, and Improved Functioning, are currently under development at SAMHSA. States that are unable to report data on these or other indicators will be required to describe their current reporting capacity and efforts underway to make collection of the data possible. (4) Revisions to tables in the Uniform Reporting System (URS). Since FY 2001, States have reported annual data on the public mental health system to the MHBG Program through 21 tables in the URS. For the past three years, CMHS worked collaboratively with States, using the Data Infrastructure Grant (DIG) process, to refine the data and make reporting more meaningful to both States and CMHS. This effort resulted in a list of revisions to the basic and developmental tables in the FY 2005–2007 MHBG guidance. The revisions to the URS tables are described below:

REVISIONS TO TABLES IN THE UNIFORM REPORTING SYSTEM

Table Description			
Table No.	Table name	Change	Proposed change
Table 1	Profile of State Population by Diagnosis	No Change.	
Table 2	Total Unduplicated Served by Age, Gender, & Race	Minor	Combine Age 0–3 with Age 4–12.
Table 3	Total Served by Setting, by Age & Gender	No Change.	
Table 4	Employment	Minor	Add Optional Table 4a. Reporting of Employment Status by 5 Diagnostic Groupings.
Table 5	Medicaid Status	No Change.	
Table 6	Profile of Client Flow and Turnover	Minor	Add Column for Length of Stay for clients in facility more than 1 year.
Table 7	State MH Expenditures and Revenues	No Change.	
Table 8	Profile of Community MHBG Expenditures	No Change.	
Table 9	Public Mental Health Service System Inventory List (Deleted in 2005).	Major	New table added, ''Social Connectedness and Improved Functioning'' for SAMHSA's newest NOMS.
Table 10	Profile of Agencies receiving MHBG Funds	No Change.	
Table 11	Consumer Evaluation of Care*	Minor	Add revisions to table and questions to clarify the survey instrument and methodology used to collect data for this domain if the recommended survey was not used.
Table 12	State Mental Health Agency Profile	No Change.	
Table 13	Untreated Prevalence of Mental Illness	No Change	Continue as developmental until refined by DIG Workgroup.
Table 14	Adults with SMI & SED served by Age, gender, Race, & Ethnicity.	Minor	Combine Age 0–3 with Age 4–12.
Table 15	Living Situation Profile	No Change.	
Table 16	EBPs	Minor	Add two questions at the end of each EBP: (1) Did the State use the SAMHSA Toolkit to guide implementation? (2) Has staff been specifically trained to implement the EBP?
Table 17	EBPs	Minor	Add two questions at the end of each EBP: (1) Did the State use the SAMHSA Toolkit to guide implementation? (2) Has staff been specifically trained to implement the EBP?
Table 18	Use of New Generation Atypical Antipsychotics	No Change.	
Table 19	Outcomes: Criminal Justice & School Attendance	Minor	Add new questions for two CMHS NOMS: Arrests, and School Attendance.
Table 20	30 and 180 day state hospital readmissions	Minor	Combine Age 0–3 with Age 4–12.
Table 21	30 and 180 day readmission to any psych bed	Minor	Combine Age 0–3 with Age 4–12.

The future of the SAMHSA/CMHS State mental health data reporting program continues to evolve with a related plan to implement a State Client Level Initiative project with a few States to test the feasibility of implementing client level reporting in the States. Activities of this pilot in the next three years will include: (1) Identifying and documenting the States' most promising approaches to the collection of client-level data; (2) developing recommendations for expanding client-level data collection systems to incorporate the NOMs; and (3) pilot testing the most promising approaches with other interested States to determine their feasibility.

The following table summarizes the annual burden for the revised application.

Part of application	Number of responses	Responses/ respondent	Burden response (hrs)	Total burden hours
Plan—(Parts B and C)	30	1	180	5,400
1 year				
2 year	4	1	150	600
3 year	25	1	110	2,750
Implementation Report (Part D)	59	1	80	4,720
Data Tables (Part E)	59	1	40	2,360
Total	59			15,830

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 23, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–5796 Filed 3–28–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2007–0001]

National Security Telecommunications Advisory Committee; Notice of Cancellation of Committee Meeting

AGENCY: National Communications System, DHS.

ACTION: Notice of Partially Closed Advisory Committee Meeting; Notice of Cancellation.

SUMMARY: The Agency is issuing this notice to cancel a meeting by teleconference of the President's National Security Telecommunications Advisory Committee (NSTAC). This meeting was originally announced in the **Federal Register** of March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Kelvin Coleman, 703–235–5643.

SUPPLEMENTARY INFORMATION: The March 29, 2007, National Security Telecommunications Advisory Committee teleconference has been cancelled. This meeting was originally announced in the **Federal Register** of March 15, 2007, in FR Doc 15mr07–70, on page 12179, in the second column.

Dated: March 26, 2007.

Arnella Terrell,

Federal Register Certification Official.

[FR Doc. E7–5830 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Extension of Existing Information Collection Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–644, Application for Posthumous Citizenship; OMB Control No. 1615–0059.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 22, 2006, at 72 FR 2708 allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 30, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0059 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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, 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–644. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202–272–8377.

Dated: March 26, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–5783 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–11]

Notice of Proposed Information Collection: Comment Request; Insurance of Adjustable Rate Mortgages (ARMS)

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:* May 29, 2007.

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 Deitzer, Departmental Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4781, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: James A. Beavers, Acting Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (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: Disclosure of Adjustable Rate Mortgages (ARMS) Rates.

OMB Control Number, if applicable: 2502–0322.

Description of the need for the information and proposed use: The Housing and Urban-Rural Recovery Act of 1983 amended the National Housing Act to permit FHA to insure adjustable rate mortgages (ARMS). On March 10, 2004, the Department of Housing and Urban Development published a final rule in the **Federal Register** amending the mortgage insurance regulations to implement additional product offerings known as ''hybrid'' adjustable rate mortgages. The Federal Housing Administration (FHA) has insured ARMS since 1984; however, these were limited to 1-year ARMS. FHA is now offering mortgage insurance on 3-year, 5-year, 7-year and 10-year ARMS. The terms of all ARMS insured by HUD-FHA are required to be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect the adjustment to the interest rate and monthly mortgage amount. Lenders must electronically indicate that the mortgage to be insured is an ARM and the term or type of the ARM.

Agency form numbers, if applicable: None.

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 respondents is 20,000, frequency of response is annually, the total annual responses are 220,000, time per response is estimated at three minutes and the estimated annual burden hours requested is 11,000.

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: March 23, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7–5731 Filed 3–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW161248, WYW172585, WYW172657, WYW173360]

Notice of Public Hearing, Notice of Intent To Begin Scoping, and To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Hearing, Notice of Intent (NOI) To Begin Scoping, and to Prepare an Environmental Impact Statement (EIS) on Four Federal Coal Lease Applications (LBA) in the Decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Casper Field Office announces its intent to prepare one EIS titled ''South Gillette Area Coal EIS'' on the potential and cumulative impacts of leasing four tracts of Federal coal. Consistent with Federal regulations promulgated for the Minerals Leasing Act of 1920, as amended, 43 Code of Federal Regulations (CFR) 3425, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale.

DATES: This notice initiates the scoping process. The BLM can best use public input if comments and resource information are submitted to the address below in the **ADDRESSES** section by June 1, 2007.

To provide the public with an opportunity to review the proposal and gain understanding of the coal leasing process, the BLM will host a meeting on April 11, 2007, at 7 p.m. at the Gillette College Presentation Hall, Room 120, 300 West Sinclair, Gillette, Wyoming. At the meeting, the public is invited to submit comments and resource information, plus identify issues or concerns to be considered in the coal leasing process. The BLM will announce future public meetings and other opportunities to submit comments on this project at least 15 days prior to the events. Announcements will be made through local news media and the Casper Field Office's Web site, which is: *http://www.wy.blm.gov/cfo/.*

ADDRESSES: Please submit written comments or concerns to the BLM Casper Field Office, Attn: Teresa Johnson, 2987 Prospector Drive, Casper, Wyoming 82604. Written comments or resource information may also be hand-delivered to the BLM Casper Field Office or sent by facsimile to the attention of Teresa Johnson at (307) 261–7510. Comments may be sent electronically to *casper_wymail@blm.gov.* Please put ''South Gillette Area Coal EIS/Teresa Johnson'' in the subject line.

Members of the public may examine documents pertinent to this proposal by visiting the Casper Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Teresa Johnson or Mike Karbs, BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms Johnson or Mr. Karbs may also be reached at (307) 261–7600.

SUPPLEMENTARY INFORMATION: A maintenance tract is a parcel of land

containing Federal coal reserves that can be leased to maintain production at an existing mine. The BLM received four Federal coal LBAs for use as maintenance tracts in Campbell County, Wyoming.

On June 6, 2004, RAG Wyoming Land Company (RAG) applied for a maintenance coal lease tract of approximately 1,578.74 acres (approximately 200 million tons of in-place coal) adjacent to the Belle Ayr Mine. RAG subsequently sold the Belle Ayr Mine and its associated interests to Foundation Coal Holdings, Inc. (Foundation). From this point forward, the applicant for the Belle Ayr North Tract will be referred to as Foundation. The tract, which is referred to as the Belle Ayr North Tract, has been assigned case number WYW161248. The Belle Ayr North Tract includes the following lands in Campbell County, Wyoming:

T. 48 N., R. 71 W., 6th PM, Wyoming
Section 18: Lots 17, 18, 19 (W½, SE¼);
Section 19: Lots 5 through 19;
Section 20: Lots 3 (SW¼), 4 (W½, SE¼), 5, 6, 7 (S½), 9 (S½), 10 through 16;
Section 21: Lots 13, 14;
Section 28: Lots 3 through 6;
Section 29: Lots 1, 6;
T. 48 N., R. 72 W., 6th PM, Wyoming
Section 24: Lots 1, 8.

Containing 1,578.74 acres, more or less.

Foundation proposes to mine the tract as a part of the Belle Ayr Mine. At the 2006 mining rate of 24.6 million tons per year, the coal included in the Belle Ayr North Tract would extend the life of the Belle Ayr Mine by as many as 8 years.

On February 10, 2006, Ark Land Company (Ark) applied for a maintenance coal tract of approximately 1,151 acres (approximately 57 million tons of in-place coal) adjacent to the Coal Creek Mine. The tract, which is referred to as the West Coal Creek Tract, has been assigned case number WYW172585. The West Coal Creek Tract includes the following lands in Campbell County, Wyoming:

T. 46 N., R. 70 W., 6th PM, Wyoming
Section 18: Lots 14 through 17;
Section 19: Lots 7 through 10, 15 through 18;
Section 30: Lots 5 through 20.

Containing 1,151.26 acres, more or less.

Ark's subsidiary, Thunder Basin Coal Company, proposes to mine the tract as a part of the Coal Creek Mine. At the 2006 mining rate of 4.2 million tons per year, the coal included in the West Coal Creek Tract would extended the life of the Coal Creek Mine by as many as 13 years.

On March 15, 2006, Caballo Coal Company (Caballo) applied for a maintenance coal tract of approximately 777.485 acres (approximately 87.5 million tons of in-place coal) adjacent to the Caballo Mine. The tract, which is referred to as the Caballo West Tract, has been assigned case number WYW172585. The Caballo West Tract includes the following lands in Campbell County, Wyoming:

T. 48 N., R. 71 W., 6th PM, Wyoming
Section 7: Lots 12, 19;
Section 8: Lot 10;
Section 17: Lots 1 through 10, 11 (N½, SE¼), 12 (NE¼), 15 (N½, SE¼), 16;
Section 18: Lots 5, 12 (NE¼);
Section 20: Lots 1, 2 (NE¼), 8 (N½ SE¼).

Containing 777.485 acres, more or less.

Caballo proposes to mine the tract as a part of the Caballo Mine. At the 2006 mining rate of 39 million tons per year, the coal included in the Caballo West Tract would extend the life of the Caballo Mine by as many as 2.2 years.

On September 1, 2006, Cordero Mining Company (Cordero) applied for a maintenance coal tract of approximately 4,653.80 acres (approximately 483 million tons of in-place coal) adjacent to the Cordero Rojo Mine. The tract, which is referred to as the Maysdorf II Tract, has been assigned case number WYW173360. The Maysdorf II Tract includes the following lands in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th PM, Wyoming
Section 4: Lots 8, 9, 16, 17;
Section 5: Lots 5, 12, 13, 20;
Section 9: Lots 6 through 8;
Section 10: Lots 7 through 10;
Section 11: Lots 13 through 16;
T. 47 N., R. 71 W., 6th PM, Wyoming
Section 7: Lots 6 through 11, 14 through 19;
Section 17: Lots 1 through 15, SW¼NW¼;
Section 18: Lots 5 through 14, 19, 20;
Section 20: Lots 1, 8, 9, 16;
Section 21: Lots 4, 5, 12, 13;
Section 28: Lots 4, 5, 12, 13;
Section 29: Lots 1, 8, 9, 16;
Section 32: Lots 1, 8, 9, 16;
Section 33: Lots 4, 5, 12, 13;
T. 47 N., R. 72 W., 6th PM, Wyoming
Section 12: Lots 1 through 16;
Section 13: Lots 1 through 8.

Containing 4,653.80 acres, more or less.

Cordero proposes to mine the tract as a part of the Cordero Rojo Mine. At the 2006 mining rate of 39.7 million tons per year, the coal included in the Maysdorf II Tract would extend the life of the Cordero Rojo Mine by as many as 12 years.

Lands in the Belle Ayr North, West Coal Creek, and Caballo West Tracts contain private surface estate overlying the Federal coal. Lands in the Maysdorf II Tract contain private and Federal surface estate overlying the Federal coal. The Federal surface is administered by BLM.

The Belle Ayr Mine, Coal Creek Mine, Caballo Mine, and Cordero Rojo Mine are operating under approved mining permits from the Land Quality and Air Quality Divisions of the Wyoming Department of Environmental Quality.

The Powder River Regional Coal Team recommended that BLM process these four coal lease applications after they reviewed the Belle Ayr North Tract at a public meeting held on April 24, 2005, in Gillette, Wyoming, and the West Coal Creek, Caballo West, and Maysdorf II Tracts at a public meeting held on April 19, 2006, in Casper, Wyoming.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the four tracts are leased to the applicants, the new leases must be incorporated into the existing mining and reclamation plans for the adjacent mines. Before the Federal coal in each tract can be mined, the Secretary of the Interior must approve the revised MLA mining plan for the mine in which each tract will be included. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior. Other cooperating agencies may be identified during the scoping process.

The BLM will provide interested parties the opportunity to submit comments or relevant information or both. This information will help the BLM identify issues to be considered in preparing the South Gillette Area Coal EIS. Issues that have been identified in analyzing the impacts of previous Federal coal leasing actions in the Wyoming Powder River Basin (PRB) include the need for resolution of conflicts between existing and proposed oil and gas development and coal mining on the tracts proposed for coal leasing; potential impacts to big game herds and hunting; potential impacts to sage-grouse; potential impacts to listed Threatened and Endangered Species; potential health impacts related to blasting operations conducted by the mines to remove overburden and coal; the need to consider the cumulative impacts of coal leasing decisions combined with other existing and proposed development in the Wyoming PRB; and potential site-specific and cumulative impacts on air and water quality.

Your response is important and will be considered in the EIS process. If you do respond, we will keep you informed of the availability of environmental

documents that address impacts that might occur from this proposal.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 21, 2007.

Donald A. Simpson,

Associate State Director.

[FR Doc. 07–1566 Filed 3–28–07; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB April 16, 2007.

DATES: *Effective Date:* March 21, 2007.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–480, Certain Textile Articles: Travel Goods of Textile Materials, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the House Committee on Ways and Means. The Commission expects to deliver its report to the Committee by October 25, 2007.

Summary of Proposal

(1) *Number of forms submitted:* two.

(2) *Title of form:* Questionnaire for U.S. Producers of Travel Goods with an Outer Surface of Textile Materials; Questionnaire for U.S. Producers of Textile Materials for Use in Travel Goods with an Outer Surface of Textile Materials.

(3) *Type of request:* New.

(4) *Frequency of use:* Single data gathering, scheduled for 2007.

(5) *Description of respondents:* U.S. firms that produce travel goods with an outer surface of textile materials, and U.S. firms that produce textile materials for use in travel goods with an outer surface of textile materials.

(6) *Estimated number of respondents:* 127 (Producer travel goods questionnaire). 39 (Producer textile materials questionnaire).

(7) *Estimated total number of hours for all respondents to complete the forms:* 1074 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from the Commission's Web site at *http://www.usitc.gov/ind_econ_ana/research_ana/outerwear.htm*, or from Kimberlie Freund, Co-Project Leader (202–708–5402; *kimberlie.freund@usitc.gov*) or Heidi Colby-Oizumi, Co-Project Leader, (202–205–3391; *heidi.colby@usitc.gov*), of the Office of Industries. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, *Attention:* Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: March 26, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5822 Filed 3–28–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on March 15, 2007 a proposed consent decree in *United States* v. *Charles E. Carlson, Front Range Royalties, Ltd., and Frontenac Mining, Ltd.*, Civil Action No. 06–cv–00275–WYD–MEH was lodged with the United States District Court for the District of Colorado.

In this action the United States brought claims under Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9607 and 9613(g), seeking the recovery of costs incurred and to be incurred by the Environmental Protection Agency (''EPA'') in response to releases or threatened releases of hazardous substances at and from the property owned by the Defendants within the Clear Creek Superfund Site, in Gilpin County, Colorado. The ability-to-pay consent decree resolves claims related to acidic drainage and metals loading into Clear Creek resulting from past mining operations on property owned by the defendants. The consent decree, among other things, provides EPA with access to and use of the defendants' property for remedial purposes and requires defendants to sell certain properties and to remit to EPA a percentage of the net sale proceeds up to the judgment amount of up to $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Charles E. Carlson, Front Range Royalties, Ltd., and Frontenac Mining, Ltd.*, Civil Action No. 06–cv–00275–WYD–MEH, D.J. Ref. 90–11–3–08439.

The consent decree may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/*

Consent_Decrees.html. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50, or $11 with attachments (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1527 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on February 21, 2007, a proposed Settlement Agreement (''Agreement'') in *In re Hayes Lemmerz International, Inc, et al.,* Case No. 01–11490, was lodged with the United States Bankruptcy Court for the District of Delaware. The Agreement is between Hayes Lemmerz and certain of its subsidiaries (collectively, the ''Debtors'') and the United States, on behalf of the United States Environmental Protection Agency (''EPA''), the United States Department of the Interior (''DOI''), and the National Oceanic and Atmospheric Administration (''NOAA'') of the United States Department of Commerce. The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under the Agreement, sites would be divided into three categories. For the first category—''Liquidated Sites''—the United States, of behalf of EPA, would receive allowed unsecured claims totaling $1,065,123 for response costs in connection with (1) The Operating Industries, Inc. Site in Monterey Park, California; (2) the Aqua Tech Site in Greer, South Carolina; (3) the Four County Landfill Site in Rochester, Indiana; (4) the Container Recycling Site (a/k/a the Greater Lakes Container Site) in Kansas City, Kansas; (5) the Reclamation Oil Site in Detroit, Michigan; and (6) the Swope Oil Site in Pennsauken, New Jersey. Under the Agreement, claims on behalf of DOI and NOAA for natural resource damages would not be liquidated, but instead would be addressed through the Agreement's provisions on Additional Sites, described below.

For the second category of sites—''Debtor-owned Sites''—environmental claims and actions by the United States would not be discharged.

The third and final category of sites—Additional Sites—would include all other sites. For Additional Sites, the United States may not issue or seek environmental orders based on the Debtors' conduct before the bankruptcy action, but may recover response costs and natural resource damages based on such conduct, as if the United States' claims had been allowed unsecured claims under the Debtors' reorganization plan. Sites that are liquidated under the Agreement for EPA are treated as Additional Sites for DOI and NOAA.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. Comments should be addressed to the Acting Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044. Comments should refer to *In re Hayes Lemmerz International, Inc, et al.,* Case No. 01–11490 (MFW), D.J. Ref. No. 90–11–2–08019/1.

The Agreement may be examined at the Office of the United States Attorney, 1007 Orange St., Suite 700, Wilmington, DE 19801, and at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.htm.* A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Enviromental and Natural Resources Division.

[FR Doc. 07–1526 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 19, 2007, a proposed Consent Decree (''Consent Decree'') in *United States* v. *PPL Montana, LLC, et al.,* Civil Action No. *1:07–CV–00040–RFC–CSO* was lodged with the United States District Court for the District of Montana.

The Consent Decree resolves claims by the United States against the operator of the Colstrip Power Plant, PPL Montana LLC, and the companies that own fractional interests of Units #3 and #4 of the Colstrip Power Plant, which include PPL Montana, NorthWestern Corporation, Puget Sound Energy, Inc., Portland General Electric Company, Avista Corporation, and PacifiCorp under sections 113 and 169A of the Clean Air Act, 42 U.S.C. 7413 and 7491. The Consent Decree will require the Defendants to install and operate so-called ''low-NO_X burners'' and overfire air on Colstrip Units #3 and #4, and meet defined emission limits until such time that Defendants obtain applicable permits. The decree also requires Defendants to pay a $50,000 civil penalty to the United States. In settlement of claims by Plaintiff-Intervenor the Northern Cheyenne Tribe (the ''Tribe''), the Consent Decree also requires Defendants to fund an Energy Efficiency Project for the benefit of members of the Tribe.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *PPL Montana, LLC, et al.,* D.J. Ref. 90–5–2–1–08494.

The Consent Decree may be examined at the Office of the United States Attorney, District of Montana, 2929 Third Avenue, Billings, MT 59102 and at U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. During

the public comment period the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.htm.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1528 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 5, 2007, Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Alphamethadol (9605)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, Washington, DC 20537; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 30, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import basic classes of any controlled substances listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 22, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–5777 Filed 3–28–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0027]

Presence Sensing Device Initiation (PSDI); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Presence Sensing Device Initiation (29 CFR 1910.217(h)).

DATES: Comments must be submitted (postmarked, sent, or received) by May 29, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0027, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0027). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''Supplementary Information.''

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at

the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph 1910.217(h) regulates the use of presence sensing devices (''PSDs'') used to initiate the operation of mechanical power presses; a PSD (e.g., a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. A mechanical power press using Presence Sensing Device Initiation (PSDI) automatically starts (initiates) the stroke when the device detects no operator within the danger zone near the press. The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with 29 CFR 1910.217(a) through (h). Accordingly, the Standard protects employees from serious crush injuries, amputations, and death.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)). The Agency is requesting to retain its current burden hour of 1 hour. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of currently approved information collection requirement.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Affected Public: Business or other for-profit.

Number of Respondents: 0.

Frequency: Initially, Annually; On occasion.

Average Time per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR Docket No. OSHA–2007–0027. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document as well as news releases and other relevant information also are available at OSHA's Web page at *http://www.osha.gov.*

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 20, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–5779 Filed 3–28–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #61

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on April 21, 2007, from 2 p.m. to 5:15 p.m. (ending time is tentative). The meeting will be held in the El Paso Museum of Art, One Arts Festival Plaza, El Paso, Texas 79901.

The Committee meeting will begin with a welcome, introductions, and announcements. Newly appointed committee members will be sworn in. Reports are anticipated from the National Endowment for the Humanities (NEH), the National Endowment for the Arts (NEA), and the Director of the Institute for Museum and Library Services. Other presentations are planned by Artist John Houser; Gabrielle Palmer, Historian; Yolanda Alameda, Director of Museums and Cultural Affairs, City of El Paso; and Michael Tomor, Executive Director, El Paso Museum of Art. The meeting will conclude with a discussion of other business, including focus on a Sister Parks Initiative linking world heritage sites, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Jenny Schmidt of the President's Committee seven (7) days in advance of the meeting at (202) 682–5560 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Schmidt.

If you need special accommodations due to a disability, please contact Ms. Schmidt through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: March 21, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–5653 Filed 3–28–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 4, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

2. *Date:* April 9, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Museums, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

3. *Date:* April 11, 2007.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges, Universities and Research Institutions, submitted to the Office of Challenge Grants at the February 1, 2007 deadline.

4. *Date:* April 12, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Libraries, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

5. *Date:* April 17, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Public Programming Organizations, submitted to the Office of Challenge Grants at the February 1, 2007 deadline.

6. *Date:* April 17, 2007.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

7. *Date:* April 18, 2007.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

8. *Date:* April 19, 2007.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

9. *Date:* April 23, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Museums, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

10. *Date:* April 23, 2007.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

11. *Date:* April 24, 2007.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

12. *Date:* April 25, 2007.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

13. *Date:* April 26, 2007.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2007 deadline.

14. *Date:* April 26, 2007.

Time: 8:30 a.m. to 5:30 p.m.

Room: 421.

Program: This meeting will review applications for Museums, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

15. *Date:* April 30, 2007.

Time: 8:30 a.m. to 5:30 p.m.

Room: 421.

Program: This meeting will review applications for Interpreting America's Historic Places, submitted to the Division of Public Programs, at the January 23, 2007 deadline.

16. *Date:* April 30, 2007.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the March 1, 2007 deadline.

Heather Gottry,

Acting Advisory Committee, Management Officer.

[FR Doc. E7–5786 Filed 3–28–07; 8:45 am]

BILLING CODE 7536–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between February 1, 2007, and February 28, 2007. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for February 2007.

Schedule B

No Schedule B appointments were approved for February 2007.

Schedule C

The following Schedule C appointments were approved during February 2007.

Section 213.3304 Department of State

DSGS61201 Public Affairs Specialist to the Assistant Secretary Oceans, International Environment and Science Affairs. Effective February 01, 2007.

DSGS61208 Legislative Management Officer (Staff Director) to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective February 01, 2007.

DSGS61192 Staff Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs. Effective February 02, 2007.

DSGS61212 Special Assistant to the Women's Human Rights Coordinator. Effective February 02, 2007.

DSGS61191 Staff Assistant to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs. Effective February 08, 2007.

DSGS61211 Protocol Officer (Visits) to the Chief of Protocol. Effective February 08, 2007.

Section 213.3305 Department of the Treasury

DYGS00844 Public Affairs Specialist to the Director, Public Affairs. Effective February 02, 2007.

DYGS00844 Public Affairs Specialist to the Director, Public Affairs. Effective February 02, 2007.

DYGS00230 Public Affairs Specialist to the Director, Public Affairs. Effective February 09, 2007.

DYGS00485 Executive Secretary Officer to the Executive Secretary. Effective February 09, 2007.

DYGS00483 Senior Advisor to the Assistant Secretary (Terrorist Financing). Effective February 14, 2007.

DYGS00486 Special Assistant for Advance to the Director of Strategic Planning, Scheduling and Advance. Effective February 16, 2007.

DYGS00487 Deputy Executive Secretary to the Executive Secretary. Effective February 23, 2007.

Section 213. 3306 Department of Defense

DDGS17010 Public Affairs Specialist to the Assistant Secretary of Defense, Public Affairs. Effective February 09, 2007.

DDGS17014 Public Affairs Specialist to the Assistant Secretary of Defense, Public Affairs. Effective February 21, 2007.

DDGS17025 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics). Effective February 28, 2007.

Section 213.3309 Department of the Air Force

DFGS01060 Special Assistant to the Principal Deputy Assistant Secretary (Financial Management). Effective February 08, 2007.

DFGS00003 Secretary to the Principal Deputy Assistant Secretary (Financial Management). Effective February 15, 2007.

Section 213.3307 Department of the Army

DWGS60029 Special Assistant to the Army General Counsel. Effective February 02, 2007.

Section 213.3310 Department of Justice

DJGS00221 Chief of Staff to the Assistant Attorney General for Justice Programs. Effective February 08, 2007.

DJGS00364 Senior Press Assistant to the Director, Office of Public Affairs. Effective February 08, 2007.

Section 213.3311 Department of Homeland Security

DMGS00627 Counselor to the Director, Office of Counternarcotics Enforcement. Effective February 01, 2007.

DMGS00628 Director, Homeland Security Information Network to the Deputy Chief of Staff. Effective February 01, 2007.

DMGS00631 Advisor to the Administrator and Deputy Administrator to the Under Secretary for Federal Emergency Management. Effective February 08, 2007.

DMGS00632 Component Liaison and Correspondence Analyst to the Executive Secretary. Effective February 08, 2007.

DMGS00633 Counselor to the Secretary to the Chief of Staff. Effective February 13, 2007.

DMGS00623 Associate Director of Strategic Communications for Outreach to the Director of Strategic Communications. Effective February 15, 2007.

DMGS00634 Advisor to the Chief Medical Officer. Effective February 16, 2007.

DMGS00638 Special Assistant and Travel Aide to the Under Secretary for Federal Emergency Management. Effective February 16, 2007.

DMGS00640 Director of External Affairs and Communications to the Under Secretary for Federal Emergency Management. Effective February 21, 2007.

DMGS00636 Coordinator for Senior Executive Actions to the Executive Secretary. Effective February 22, 2007.

Section 213.3312 Department of the Interior

DIGS01096 Press Secretary to the Director, Office of Communications. Effective February 05, 2007.

DIGS01095 Special Assistant to the White House Liaison. Effective February 08, 2007.

DIGS60134 Chief, Congressional and Legislative Affairs Office to the Deputy Commissioner (Director of External and Intergovernmental Affairs). Effective February 09, 2007.

DIGS79004 Special Assistant (Communication) to the Deputy Commissioner (Director of External and Intergovernmental Affairs). Effective February 14, 2007.

DIGS07001 Special Assistant to the Director, Bureau of Land Management. Effective February 15, 2007.

DIGS01097 Director, Take Pride In America to the Director, External and Intergovernmental Affairs. Effective February 22, 2007.

DIGS60135 Special Assistant (Congressional and Legislative Affairs) to the Chief, Congressional and Legislative Affairs Office. Effective February 26, 2007.

Section 213.3313 Department of Agriculture

DAGS00876 Deputy Director of Advance to the Director of Communications. Effective February 02, 2007.

DAGS00878 Staff Assistant to the Deputy Under Secretary, Research, Education and Economics. Effective February 02, 2007.

DAGS00877 Confidential Assistant to the Deputy Assistant Secretary. Effective February 08, 2007.

DAGS00879 Confidential Assistant to the Deputy Under Secretary for Marketing and Regulatory Programs. Effective February 08, 2007.

DAGS00880 Confidential Assistant to the Administrator, Farm Service Agency. Effective February 08, 2007.

DAGS00881 Legislative Analyst to the Under Secretary for Food Nutrition and Consumer Services. Effective February 16, 2007.

Section 213.3314 Department of Commerce

DCGS00409 Special Assistant to the Secretary. Effective February 02, 2007.

DCGS00600 Director, Office of Public and Constituent Affairs to the Under Secretary, Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration). Effective February 02, 2007.

DCGS00517 Director, Congressional and Public Affairs to the Under Secretary of Commerce for Industry and Security. Effective February 12, 2007.

Section 213.3315 Department of Labor

DLGS60180 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 08, 2007.

DLGS60154 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 09, 2007.

DLGS60235 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 14, 2007.

DLGS60262 Special Assistant to the Assistant Secretary for Employment Standards. Effective February 14, 2007.

DLGS60215 Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective February 15, 2007.

DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health. Effective February 16, 2007.

DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management. Effective February 16, 2007.

DLGS60142 Special Assistant to the Chief of Staff. Effective February 26, 2007.

DLGS60212 Special Assistant to the Director, Office of Faith Based and Community Initiatives. Effective February 26, 2007.

Section 213.3316 Department of Health and Human Services

DHGS60043 Deputy Assistant Secretary for Planning and Evaluation Human Services Policy to the Assistant Secretary for Planning and Evaluation. Effective February 01, 2007.

DHGS60045 Associate Director, Temporary Assistance for Needy Families to the Director, Office of Family Assistance. Effective February 01, 2007.

DHGS60047 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media). Effective February 09, 2007.

DHGS60049 Special Assistant to the Assistant Secretary, Health. Effective February 09, 2007.

DHGS60046 Senior Speech Writer to the Assistant Secretary for Public Affairs. Effective February 14, 2007.

DHGS60050 Confidential Assistant to the Associate Commissioner, Head Start Bureau. Effective February 14, 2007.

DHGS60048 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media). Effective February 20, 2007.

Section 213.3317 Department of Education

DBGS00594 Confidential Assistant to the Press Secretary. Effective February 01, 2007.

DBGS00583 Confidential Assistant to the Senior Advisor to the Under Secretary. Effective February 08, 2007.

DBGS00591 Confidential Assistant to the Press Secretary. Effective February 08, 2007.

DBGS00593 Special Assistant to the Press Secretary. Effective February 08, 2007.

DBGS00490 Deputy Assistant Secretary for Media Relations and Strategic Communications to the Assistant Secretary, Office of Communications and Outreach. Effective February 14, 2007.

DBGS00592 Special Assistant to the Press Secretary. Effective February 14, 2007.

DBGS00597 Confidential Assistant to the Assistant Deputy Secretary. Effective February 14, 2007.

DBGS00600 Special Assistant to the General Counsel. Effective February 15, 2007.

DBGS00601 Special Assistant to the Director, Intergovernmental Affairs. Effective February 28, 2007.

DBGS00602 Confidential Assistant to the Deputy Assistant Secretary for Communications and Outreach. Effective February 28, 2007.

Section 213.3303 Office of Management and Budget

BOGS70008 Deputy to the Associate Director for Legislative Affairs (House). Effective February 22, 2007.

Section 213.3303 Office of National Drug Control Policy

QQGS70003 Deputy Chief of Staff to the Chief of Staff. Effective February 05, 2007.

Section 213.3303 Office of the United States Trade Representative

TNGS70003 Confidential Assistant to the Deputy United States Trade Representative. Effective February 26, 2007.

Section 213.3303 Presidents Commission on White House Fellowships

WHGS00020 Staff Assistant to the Associate Director. Effective February 22, 2007.

Section 213.3323 Federal Communications Commission

FCGS07052 Bureau Chief to the Chairman. Effective February 16, 2007.

Section 213.3330 Securities and Exchange Commission

SEOT60004 Director of Legislative Affairs to the Chairman. Effective February 26, 2007.

Section 213.3331 Department of Energy

DEGS00561 Senior Advisor to the Deputy Secretary of Energy. Effective February 08, 2007.

DEGS00562 Senior Policy Advisor to the Associate Director for System Operations and External Relations. Effective February 08, 2007.

DEGS00564 Special Assistant to the Principal Deputy Assistant Secretary. Effective February 15, 2007.

DEGS00568 Special Assistant for Communications to the Director, Office of Electricity Delivery and Energy Reliability. Effective February 16, 2007.

DEGS00569 Transmission Sitting Analyst to the Director, Office of Electricity Delivery and Energy Reliability. Effective February 16, 2007.

DEGS00056 Special Program Assistant to the Assistant Secretary of Energy (Nuclear Energy). Effective February 26, 2007.

DEGS00570 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management). Effective February 28, 2007.

Section 213.3331 Federal Energy Regulatory Commission

DRGS17039 Confidential Assistant to the Member-Federal Energy Regulatory Commission. Effective February 16, 2007.

Section 213.3332 Small Business Administration

SBGS00610 Senior Advisor to the Associate Administrator for Capital Access. Effective February 08, 2007.

SBGS00611 Senior Advisor to the Associate Administrator for Field Operations. Effective February 08, 2007.

Section 213.3337 General Services Administration

GSGS00186 Confidential Assistant to the Associate Administrator for Performance Improvement. Effective February 08, 2007.

GSGS60131 Director of Strategic Communications to the Deputy Associate Administrator for Communications. Effective February 09, 2007.

GSGS60126 Deputy Associate Administrator for Communications to the Associate Administrator for Citizen Services and Communications. Effective February 16, 2007.

Section 213.3339 United States International Trade Commission

TCGS00007 Staff Assistant (Legal) to a Commissioner. Effective February 08, 2007.

TCGS00037 Staff Assistant (Legal) to the Chairman. Effective February 08, 2007.

Section 213.3348 National Aeronautics and Space Administration

NNGS00176 Deputy Press Secretary/Public Affairs Specialist to the Assistant Administrator for Public Affairs. Effective February 06, 2007.

Section 213.3353 Merit Systems Protection Board

MPSL00001 Chief Counsel to the Vice Chairman. Effective February 09, 2007.

Section 213.3357 National Credit Union Administration

CUOT01317 Senior Policy Advisor to the Chairman. Effective February 08, 2007.

Section 213.3384 Department of Housing and Urban Development

DUGS60467 Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective February 08, 2007.

Section 213.3394 Department of Transportation

DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective February 01, 2007.

DTGS60197 Confidential Assistant to the Chief of Staff. Effective February 02, 2007.

DTGS60159 Special Assistant to the Associate Administrator for Policy and Governmental Affairs. Effective February 15, 2007.

DTGS60194 Special Assistant to the Administrator. Effective February 15, 2007.

Section 213.3396 National Transportation Safety Board

TBGS61518 Special Assistant to the Vice Chairman. Effective February 16, 2007.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Tricia Hollis,

Chief of Staff/Director of External Affairs.

[FR Doc. E7–5778 Filed 3–28–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55514; File No. SR–CBOE–2007–29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Class Quoting Limit in the Option Class Accredited Home Lenders Holding (LEND)

March 22, 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 March 15, 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 CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, 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 increase the class quoting limit in the option class Accredited Home Lenders Holding (LEND). The text of the proposed rule change is available on CBOE's Web site (*www.cboe.com*), at the CBOE's Office of the Secretary, 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

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits (''CQLs'') for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

Rule 8.3A, Interpretation .01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as ''* * * substantial trading volume, whether actual or expected.''[6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the option class LEND from its current limit of 25 to 35.

The trading volume in LEND has increased substantially recently. Increasing the CQL in LEND options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

2. Statutory Basis

Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will 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 neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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 Number SR–CBOE–2007–29 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–2007–29. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' Rule 8.3A.01(c).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–9303. Copies of such filing 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–2007–29 and should be submitted on or before April 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5815 Filed 3–28–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55515; File No. SR–FICC–2006–19]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Membership, Definitions, and the Electronic Pool Notification Service

March 22, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 13, 2006, the Fixed Income Clearing Corporation (''FICC'') 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 substantially by FICC. 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 purpose of this filing is to restructure FICC's Government Securities Division's (''GSD'') membership standards and membership requirements by conforming them to current practice and to harmonize them with similar rules of FICC's clearing agency affiliate, the National Securities Clearing Corporation (''NSCC''). In addition, this rule filing would update various definitions and make technical changes to GSD and to FICC's Mortgage-Backed Securities Divison's (''MBSD'') Electronic Pool Notification (''EPN'') rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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. Membership Rules

FICC proposes to revise its rules concerning membership types, the membership application process, and the ongoing requirements of GSD members into a format that FICC believes will make such rules easier to locate and understand by applicants and members. To accomplish this, FICC would amend current Rule 2 (proposed to be titled ''Members''), move much of the content of current Rule 2 into a new Rule 2A (''Initial Membership Requirements''), and revise Rule 3 (proposed to be titled ''Ongoing Membership Requirements''). Other rules and provisions would be modified to make technical corrections where necessary and to be harmonized with analogous NSCC rules.

a. *Membership Types:* FICC's current Rule 2 (''Comparison-Only and Netting Members'') sets forth the types of GSD members, eligibility requirements, application procedures, and member reporting requirements. FICC proposes to revise Rule 2 to establish each GSD membership type: Comparison-Only Members, Netting Members, Sponsoring Members, Sponsored Members, and Funds-Only Settling Bank Members. Substantially all other provisions contained in the current Rule 2 will be moved to either proposed Rule 2A or proposed Rule 3.

One exception to this is that FICC is proposing to delete current Rule 2, Section 4 (''Financial Reports by Netting Applicants). FICC states that the rationale for such proposed deletion is that FICC already advises during the application process applicants of the required financial reports depending on the category of membership applied for and the applicant entity type. In addition, FICC would set forth in proposed Rule 3 the financial reports that must be submitted by members to FICC on an ongoing basis.

FICC is also proposing to delete Section 1(f) of Rule 2, which provides that applicants that have been approved for membership must execute and deliver to FICC a membership agreement. This provision is redundant with existing Rule 2, Section 3, which would appear in proposed Rule 2A, Section 7.

b. *Consolidation of Membership Standards and Requirements:* The membership qualifications, financial standards, and operational requirements for each member type are currently set forth in Rule 2 (''Comparison-Only and Netting Members''), Rule 3 (''Financial Responsibility, Operational Capability and Other Membership Standards of Comparison-Only and Netting Members''), and Rule 4 (''Clearing Fund, Watch List and Loss Allocation''). To consolidate this information, FICC proposes to create a new Rule 2A (''Initial Membership Requirements'') that would establish the initial membership eligibility requirements for all member types and would set forth the process of membership application and evaluation. In addition, FICC proposes to restructure Rule 3 (''Ongoing Membership Requirements'') to contain all current GSD rule provisions regarding the continuing requirements of members.

The restructuring would encompass three substantive changes:

(i) *Immediate Placement on the Watch List:* FICC proposes to delete current Rule 3, Section 1(d)(iii) that automatically disqualifies an applicant from becoming member if the applicant is subject to any action or condition, the existence of which would require the applicant to be placed on FICC's Watch List if it were already a member. FICC believes that eliminating such provision will not diminish FICC's ability to deny membership to an unworthy applicant because FICC would still retain under other sections of its rules the discretion to deny membership based on the applicant's underlying financial, operational, or character issues. Moreover, FICC's credit risk matrix enables FICC to place such applicant directly on FICC's watch list for closer monitoring.

(ii) *Additional Reporting Requirements:* FICC proposes to add new language to proposed Rule 3, Section 2 (''Reports by Netting

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Members'') that would require members to provide FICC with: (a) Reports from their independent auditors on internal controls (proposed Rule 3, Section 2(b)(ii)) and (b) a copy of the letter granting an extension of time by a regulatory authority to a member with respect to the submission of a report (proposed Rule 3, Section 2(h), para. 2).

(iii) *Annual Audited Financial Statements:* FICC proposes to remove the current requirement in Rule 2, Section 4(a) that audited annual financial statements submitted by netting members be ''without qualification.'' FICC believes that a qualification in an annual audited financial statement should not warrant automatic denial of membership because a qualification may not always be material. In addition, the event that triggered a qualification may have been corrected by the applicant or member by the time the applicant or member submits its financial statement for review by FICC. Going forward, FICC would analyze qualifications in GSD netting member financial statements on a case-by-case basis.

Other conforming and non-substantive changes have been made within the rules to accommodate this restructuring and to update cross references where applicable.

2. Non-Substantive Changes and Technical Corrections

(i) *Definition of ''Person'':* FICC proposes to amend the current definition of Person contained in GSD Rule 1 (''Definitions'') to indicate that the term will be used throughout the rules to mean a partnership, corporation, limited liability corporation, or other organization, entity, or individual.

(ii) *Definition of ''Eligible Security'':* FICC proposes to amend the definition of Eligible Security to make clear that any security of an issuer that is on the Office of Foreign Assets and Control's (''OFAC'') Specially Designated Nationals list or a security from a country that is subject to OFAC sanctions may not be an eligible security at GSD.

In addition, FICC is proposing to make the same change to the definition of Eligible Security in MBSD's Clearing and EPN rules.

(iii) *Definition of ''Bond Market Association'':* The Bond Market Association is now known as the Securities Industry and Financial Markets Association. GSD proposes to remove the definition of and references to The Bond Market Association from its rules and replace it with a definition for and references to The Securities Industry and Financial Markets Association.

(iv) *Governing Law Provision:* FICC is proposing to clarify the Governing Law provision contained in GSD's and MBSD's Clearing and EPN rules to state that the respective rules of GSD and MBSD Clearing and EPN are subject to New York law as applicable to contracts executed and performed in New York.

(v) *Insurance Company Netting Member Eligibility Requirements:* FICC proposes to remove from GSD's rules the eligibility requirements for Insurance Company Netting Members because GSD does not currently have any such members. FICC will, however, retain the definition of Insurance Company Netting Member in its rules in the event that such an entity applies for membership in the future. Appropriate eligibility requirements would be reviewed at that time and added to the rules.

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations promulgated thereunder applicable to FICC. FICC states that its rules are intended to protect FICC and its members from undue risk while providing access to FICC services and that the proposed rule change will assist FICC and its members in interpreting and understanding the rules with regard to applicant and ongoing membership standards and requirements. In addition, FICC believes that conforming the rules to actual practice will assist FICC in assuring the safeguarding of funds and securities in FICC's control or for which FICC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–FICC–2006–19 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–FICC–2006–19. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf.* 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

submission should refer to File No. SR–FICC–2006–19 and should be submitted on or before April 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5752 Filed 3–28–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55518; File No. SR–NASD–2007–024]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Portfolio Margin

March 23, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed the proposed rule 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 it 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

NASD is proposing to correct a typographical error in NASD Rule 2520 (Margin Requirements). In particular, the proposed rule change would amend NASD Rule 2520 to re-label a subparagraph that was incorrectly identified as part of a recent rule filing. Below is the text of the proposed rule change.[5] Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

2520. Margin Requirements

(a) through (f) No Change.

(g) Portfolio Margin.

As an alternative to the ''strategy-based'' margin requirements set forth in paragraphs (a) through (f) of this Rule, members may elect to apply the portfolio margin requirements set forth in this paragraph (g) to all margin equity securities,[1] listed options, security futures products (as defined in Section 3(a)(56) of the Exchange Act), unlisted derivatives, warrants, index warrants and related instruments, provided that the requirements of paragraph (g)(6)(B)(i) of this Rule are met.

In addition, a member, provided that it is a Futures Commission Merchant (''FCM'') and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this paragraph (g) to combine an eligible participant's related instruments as defined in paragraph (g)(2)(D), with listed index options, unlisted derivatives, options on exchange traded funds (''ETF''), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts (''IRAs'').

(1) through (5) No Change.

(6) Establishing Account and Eligible Positions.l

(A) No Change.

(B) Eligible Products.

(i) For eligible participants as described in paragraphs (g)(4)(A) through (g)(4)(C), a transaction in, or transfer of, an eligible product may be effected in the portfolio margin account. Eligible products under this paragraph (g) consist of:

(a) through (e) No Change.

[(d)]*(f)* a related instrument as defined in paragraph (g)(2)(D).

(7) through (15) No Change.

[1]For purposes of this paragraph (g) of the Rule, the term ''margin equity security'' utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 12, 2007, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Rule 2520 (Margin Requirements) to establish a portfolio margin pilot program.[6] The Commission published notice of the proposed rule change in the **Federal Register** on March 20, 2007.[7] The proposed rule change, among other things, added a new paragraph (g)(6)(B)(i) that specifies in separate subparagraphs a list of the eligible products for the portfolio margin pilot program. This list of eligible products in paragraph (g)(6)(B)(i) inadvertently identifies two provisions as subparagraph (d). NASD is filing this proposed rule change to re-label the last subparagraph (d) as subparagraph (f).

NASD has filed the proposed rule change for immediate effectiveness. As noted above, the proposed rule change is part of a pilot program that would

[2] 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. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The underlying rule text used in this proposed rule change is based on NASD Rule 2520, as amended by SR–NASD–2007–013, which will be implemented on April 2, 2007. *See* Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of filing and immediate effectiveness of File No. SR–NASD–2007–013).

[6] The portfolio margin pilot program is substantially similar to recent margin rule amendments by the New York Stock Exchange (''NYSE'') and the Chicago Board Options Exchange (''CBOE''), which were approved by the Commission. *See* Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR–NYSE–2006–13, relating to further amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR–NYSE–2005–93, relating to amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 52031 (July 14, 2005) 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19, relating to the NYSE's original portfolio margin pilot). *See also* Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR–CBOE–2006–014, relating to amendments to the CBOE's portfolio margin pilot); Exchange Act Release No. 52032 (July 14, 2005) 70 FR 42118 (July 21, 2005) (SR–CBOE–2002–03, relating to the CBOE's original portfolio margin pilot).

[7] *See* Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of filing and immediate effectiveness of File No. SR–NASD–2007–013).

begin on April 2, 2007 and end on July 31, 2007, unless the SEC approves an extension of the pilot or adoption of the program on a permanent basis.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Rule 2520(g)(6)(B)(i).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate. 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.

NASD has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waivers are consistent with the protection of investors and the public interest because they would allow the technical corrections in the proposed rule change to be implemented on April 2, 2007, when the NASD portfolio margin pilot program begins, pursuant to SR–NASD–2007–013.[11] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[12]

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–NASD–2007–024 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–NASD–2007–024. 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. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2007–024 and should be submitted on or before April 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5814 Filed 3–28–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] *See supra* note 7.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55517; File No. SR–NYSE–2007–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to NYSE Rule 440A (''Telephone Solicitations'')

March 23, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b-4 thereunder, notice is hereby given that on January 25, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its Rule 440A, as described in Items I, II and III below, which items have been 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 New York Stock Exchange LLC is filing with the Securities and Exchange Commission proposed Rule 440A (''Telephone Solicitations'') which addresses member organizations' telephone solicitations of customers.

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 the proposed rule change is available on the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room. 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

NYSE Rule 440A (the ''Rule'') addresses member organizations' telephone solicitations of customers. Rule 440A(g) provides ''No member or member organization may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.''

Subsection 440A(g)(1) provides that a facsimile advertisement is not ''unsolicited'' where the recipient has granted the member organization prior express invitation or permission to deliver the advertisement, as further defined in the Rule. This proposed amendment to NYSE Rule 440A would provide that such an advertisement also will not be considered ''unsolicited'' where there is an ''established business relationship'' as defined in the present Rule 440A(j).

In addition, changes are proposed to delete the term ''member'' as used in the Rule to reflect the recent reorganization of the Exchange,[3] and the term ''allied member'' as redundant within the context of the present regulation.

Background

The amendments to Rule 440A(g) were adopted by the Exchange on December 2, 2004 [4] to incorporate regulations issued by the Federal Communications Commission (''FCC'') and the Federal Trade Commission (''FTC'') relating to the implementation of the National Do Not Call registry and the amendments to the Telephone Consumer Protection Act of 1991.[5] The FCC and FTC regulations contained no exception for facsimiles sent to customers with which a broker-dealer had an ''established business relationship'' as such term was defined. Subsequently, Congress passed legislation [6] which restored an exemption for unsolicited faxes sent to a recipient with whom the sender had an established business relationship. Accordingly, the proposed amendments to NYSE Rule 440A(g)(1) will add an exception for established business relationships to the definition of ''unsolicited'' and will also set forth the measures necessary for a customer to opt out of the receipt of further communications. These standards, which are taken from applicable FCC regulations,[7] generally require that the member organization and the person not only have an established business relationship,[8] but also that the member organization obtain the fax number from the recipient (or the recipient's web site, directory, or advertisement). Further, the recipient must not have stated on those materials that they do not accept unsolicited advertisements at the listed number. The member organization must also take reasonable steps to verify that the recipient consented to have the number listed.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) [10] of the Act which requires NYSE to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed amendments will move the Rule into conformity with revised federal regulatory standards and ensure that customers are able to opt out of the receipt of undesired communications.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

a. By order approve the proposed rule change, or

b. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–06 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–2007–06. 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

[3] *See* Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 6, 2006) (SR–NYSE–2005–77).

[4] *See* Exchange Act Release No. 34–52579 (Oct. 7, 2005), 70 FR 60119 (Oct. 14, 2005) (SR–NYSE–2004–73).

[5] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 03–153 (Jun. 26, 2003), 68 FR 44144 (Jul. 25, 2003).

[6] Junk Fax Prevention Act of 2005, Pub. L. 109–21, 119 Stat. 359 (2005).

[7] FCC 06–42 (Apr. 5, 2006), 71 FR 56893 (Sept. 28, 2006).

[8] An established business relationship is defined as a prior existing relationship formed by voluntary two-way communication between a member organization and a person where the person has, generally speaking, done business with the member organization within the 18 months preceding the telephone call, the member organization is the broker-dealer of record for the person's account within those 18 months, or the person has contacted the member organization to inquire about a product or service within the three months preceding the telephone call.

[9] The Exchange expanded this description of the standards and added the definition of ''established business relationship'' to this notice during a telephone conversation between William Jannace, Managing Director, Rule and Interpretive Standards, NYSE Regulation, and Elizabeth MacDonald, Special Counsel, Division of Market Regulation, Commission, March 20, 2007.

[10] 15 U.S.C. 78f(b)(5).

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. 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–2007–06 and should be submitted on or before April 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5816 Filed 3–28–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55504; File No. SR–OCC–2006–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Approval of Fund Shares Deposited as Margin

March 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 31, 2006, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. 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 proposed rule change would eliminate the requirement that the Membership/Risk Committee approve classes of fund shares (*e.g.*, ETFs) for deposit as margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would delete Interpretation and Policy .11 to Rule 604, Forms of Margin, which requires that OCC's Membership/Risk Committee approve classes of fund shares for deposit as margin. Committee approval was deemed to be a prudent safeguard when OCC began accepting fund shares for deposit in 1996 because fund shares had only been trading since 1993, and OCC was not as familiar with them as it is today. In 1997, OCC began clearing options on fund shares. Since then, fund shares have become a widely used investment tool, and OCC has developed a broad understanding of the fund share marketplace. In light of these developments, OCC believes that fund shares should be accepted as margin under the same conditions that apply to the deposit of other equity securities without the need for Committee approval.

The proposed change is consistent with Section 17A of the Act because it eliminates an unwarranted approval process for the acceptance of fund shares as a form of margin asset while employing the same safeguards that apply to the deposit of other equity securities as margin in order to assure the safeguarding of securities which are in OCC's custody or control. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2006–15 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–OCC–2006–15. 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

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* 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–OCC–2006–15 and should be submitted on or before April 19, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5753 Filed 3–28–07; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB): Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission*@omb.eop.gov.

(SSA): Social Security Administration, DCFAM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330, 404.339–341 and 404.348–404.349—0960–0019.* SSA uses the information to determine if a non-custodial parent who is filing for Spouse's or Mother's and Father's benefits based on having a child in care meets the in-care requirements. Respondents are applicants for Spouse and/or Mother's and Father's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 2,333 hours.

2. *Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502–.513, 404.515 and 20 CFR 416.550–.570, 416.572—0960–0037.* The SSA–632–BK is used by a beneficiary/claimant to request a waiver of recovery of an overpayment by explaining why they feel they are without fault in causing the overpayment and to provide financial circumstances so that SSA can determine whether recovery would cause financial hardship. It is also used to request a different rate of recovery. In those cases the financial information must be provided for SSA to determine how much the overpaid person can afford to repay each month. Respondents are overpaid beneficiaries or claimants who are requesting a waiver of recovery for overpayment or a lesser rate of withholding.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 500,000.

Estimated Annual Burden: 875,000 hours.

Reason for completing form	Number of respondents	Frequency of response	Average burden per response	Total annual burden
Request Waiver	400,000	1	2 hours	800,000
Request Change	100,000	1	45 minutes	75,000
Totals	500,000			875,000

3. *Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103.* Form SSA–7163A is used whenever a beneficiary or claimant reports work on a farm outside the United States (U.S.). It is designed to obtain sufficient information to determine whether or not foreign work deductions are applicable to the claimant's benefits. Respondents are beneficiaries or claimants for Social Security benefits who are engaged in farming activity outside the U.S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 1 hour.

Estimated Annual Burden: 1,000 hours.

4. *Disability Report—Appeal—20 CFR 404.1512, 416.912, 404.916(c), 416.1416(c), 405 Subpart C, 422.140—0960–0144.* The SSA–3441–BK is used

[3] 17 CFR 200.30–3(a)(12).

to secure updated medical and other information since the claimant's last disability determination from claimants who are appealing an unfavorable disability determination. This information may be used for reconsideration or request for federal reviewing official review of initial disability determinations and continuing disability reviews as well as a request for a hearing. This information assists the State Disability Determination Services, federal reviewing officials, and administrative law judges in preparing for appeals and hearings and in issuing a decision. Respondents are individuals who appeal denial of Social Security disability income and Supplemental Security Income (SSI) benefits, cessation of benefits, or who are requesting a hearing.

Type of Request: Revision of an OMB-approved information collection.

Estimated Annual Burden: 1,296,190 hours.

Collection method	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden hours
SSA–3441 (Paper Form)	21,282	1	45 minutes	15,962
Electronic Disability Collect System (EDCS)	1,284,019	1	45 minutes	963,014
I3441 (Internet Form)	158,607	1	120 minutes	317,214
Totals	1,463,908			1,296,190

5. *Request for Earnings and Benefit Estimate Statement—20 CFR 404.810—0960–0466.* SSA uses the information the requestor provides on Form SSA–7004 to identify his or her Social Security earnings record, extract posted earnings information, calculate potential benefit estimates, produce the resulting Social Security Statement and mail it to the requestor. Respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 545,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Average Burden: 45,417 hours.

6. *Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472.* The information collected on Form SSA–L4112 is used by SSA to determine whether wages reported by an employer are correct and should be credited to the employee's Social Security number when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

7. *Earnings Record Information—20 CFR 404.801–404.803 and 404.821–404.822—0960–0505.* The information collected by form SSA–L3231–C1 is used to ensure that the proper person is credited for working when earnings are reported for a minor under age seven years. The respondents are businesses reporting earnings for children under age 7.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

8. *Appointment of Representative—20 CFR 404.1707, 404.1720, 404.1725, 410.684 and 416.1507—0960–0527.* A person claiming a right or benefit under the Social Security Act must notify SSA in writing if he or she appoints an individual to represent him or her in dealing with SSA. The information collected by SSA on form SSAS–1696–U4 is used to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim, and it also allows the claimant to give permission to their appointed representative to designate a person to copy claims files. Respondents are applicants who notify SSA that they have appointed a person to represent them in their dealings with SSA when claiming a right to benefits and representatives of claimants for Social Security benefits.

Type of Request: Revision of an approved OMB information collection.

Number of Respondents: 551,520.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 91,920 hours.

9. *Community Work Incentive Coordinator Application—0960—NEW.* Section 1149 of the Social Security Act established the ''Work Incentives Outreach Program.'' The program was reauthorized by Section 407 of the Social Security Protection Act of 2004. To be eligible to work as a specialist under the new improved program, individuals must possess a bachelors degree or have equivalent qualifications derived from training and work experience. Through the services of a private contractor, SSA will collect the requested information to determine if an individual is qualified to provide services. Respondents are individuals who apply to become qualified as Community Work Incentive Coordinators.

Type of Request: Request for a new information collection.

Number of Respondents: 500.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 500 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Farm Self-Employment Questionnaire—20 CFR 404.1095—0960–0061.* Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have ''net earnings from self-employment.'' Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits, whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 7,917 hours.

2. *Authorization To Disclose Information to the Social Security Administration—20 CFR Subpart O, 404.1512 and Subpart I, 416.912—0960–0623.* SSA must obtain sufficient medical evidence to make eligibility determinations for the SSDI benefits and Supplemental Security Income (SSI) payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use form SSA–827 to provide consent for release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for SSDI and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 1 (Average forms per case 4).

Average Burden per Response: *13 minutes.

Total Annual Responses: 15,415,712.

Estimated Annual Burden: 835,018 hours.

***Please Note:** Respondents to the SSA–827 collection complete a total four forms. SSA estimates that it takes a claimant 10 minutes to read both sides and sign the initial SSA–827. However, once a claimant reads the first form, it takes considerably less time to date and sign the subsequent forms because the forms do not have to be read again. SSA estimates the signing and dating of the three additional forms at one minute per form, resulting in three additional minutes. Therefore, the total time it takes to complete all four SSA–827's is 13 minutes.

3. *Prisoner Matching Agreements—20 CFR 404.468 and 20 CFR 416.211 —0960–NEW.*

Collection Background

Section 202(x) of the Social Security Act (the Act) and regulations at 20 CFR 404.468 preclude a person from receiving a benefit under title II for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense or because he/she is not-guilty by reason of insanity. Accordingly, Section 1611(e) of the Social Security Act and regulations at 20 CFR 416.211, provide that no person shall be an eligible individual or eligible spouse for title XVI with respect to any month if throughout such month he is an inmate of a public institution.

Prisoner Matching Collection Activity

To enforce these provisions of the Act, SSA has entered into agreements with the Federal Bureau of Prisons, along with State and local correctional facilities and certain mental health institutions, to submit monthly prisoner reports to SSA. SSA matches these reports against our files to identify incarcerated individuals receiving Social Security and Supplemental Security Income (SSI) payments and take action to suspend their payments. SSA uses the reports of confinement as the basis for stopping payments under titles II & XVI. The respondents to the collection are State and local correctional facilities, the Federal Bureau of Prisons and certain mental health institutions that have entered into prisoner matching agreements with SSA.

Type of Request: Collection in use without OMB Control Number.

Number of Respondents: 3,000.

Frequency of Response: 12.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 36,000 hours.

4. *Fugitive Felon Matching Agreements—20 CFR 404.471 and 416.1339—0960–NEW.*

Collection Background

Sections 202(x) and 1611(e)(4) of the Social Security Act provides that a person may not receive a benefit under title II and will not be eligible under title XVI for any month he or she is avoiding prosecution for a felony, is avoiding confinement or conviction of a felony, or is violating a condition of probation or parole. In jurisdictions that do not define crimes as felonies this nonpayment/ineligibility applies to any crime that is punishable by death or imprisonment for more than one year, regardless of the actual sentence imposed.

Fugitive Felon Matching Collection Activity

To enforce these provisions of the Act, SSA has entered agreements with the FBI's National Crime Information Center (NCIC), the U.S. Marshall Service, 21 individual States, Washington DC, and four metropolitan law enforcement agencies under which these law enforcement agencies submit outstanding felony and parole/probation violator warrants to SSA. SSA uses the reports of outstanding warrants as the basis for stopping payments under titles II & XVI. The respondents to the collection are the Federal, State and local law enforcement agencies that have entered into Fugitive Felon matching agreements with SSA.

Type of Request: Collection in use without OMB Control Number.

Number of Respondents: 28.

Frequency of Response: * 7.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 196 hours.

***Please Note:** Seven responses per respondent is the average frequency of reporting. The actual response rate per respondent varies based on the individual need to report.

Dated: March 23, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–5728 Filed 3–28–07; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0021]

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of quarterly meeting.

DATES: April 11, 2007–9 a.m. to 5:30 p.m.; April 12, 2007–1:30 p.m. to 5:30 p.m.; April 13, 2007–9 a.m. to 12 noon.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. *Phone:* 703–486–1111.

SUPPLEMENTARY INFORMATION:

Type of meeting: On April 11–13, 2007, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Wednesday, April 11, 2007, from 9 a.m. until 5:30 p.m. The quarterly meeting will continue on Thursday, April 12, 2007, from 1:30 p.m. until 5:30 p.m. and on Friday, April 13, 2007, from 9 a.m. until 12 noon.

Agenda: The full agenda will be posted at least one week before the start of the meeting on the Internet at *http://www.ssa.gov/work/panel/meeting_information/agendas.html,* or can be received, in advance, electronically or by fax upon request.

Public testimony will be heard on Wednesday, April 11, 2007 from 5–5:30 p.m. and on Thursday, April 12, 2007, from 4:30 p.m. until 5:30 p.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five pages, may be submitted in person or by mail, fax or email on an ongoing basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Tinya White-Taylor, at Tinya.*White-Taylor@ssa.gov* or by calling (202) 358–6420.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Tinya White-Taylor at (202) 358–6420.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: March 21, 2007.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E7–5729 Filed 3–28–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5680]

Advisory Committee on International Economic Policy; Notice of Committee Renewal

Renewal of Advisory Committee. The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Committee serves in a solely advisory capacity concerning major issues and problems in international economic policy. The Committee provides information and advice on the effective integration of economic interests into overall foreign policy and on the Department of State's role in advancing American commercial interests in a competitive global economy. The Committee also appraises the role and limits of international economic institutions and advises on the formulation of U.S. economic policy and positions.

This Committee includes representatives of American organizations and institutions having an interest in international economic policy, including representatives of American business, labor unions, public interest groups, and trade and professional associations. The Committee meets at least annually to advise the Department on the full range of international economic policies and issues.

For further information, please call Nancy Smith-Nissley, Senior Coordinator, Office of Economic Policy Analysis and Public Diplomacy, Economic, Energy and Business Bureau, U.S. Department of State, at (202) 647–1682.

Dated: February 20, 2007.

David Burnett,

Director, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, Department of State.

[FR Doc. E7–5806 Filed 3–28–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5733]

Advisory Committee on Democracy Promotion (ACDP) Meeting Notice

Notice of Public Meeting

A meeting of the Advisory Committee on Democracy Promotion will be held on Monday, April 16, 2007, in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m. and is expected to conclude at 1 p.m., and will be open to the public, up to the capacity of the meeting room. The Committee members will discuss various issues relating to strategies to promote democratic governance, with Secretary Rice participating from 10–10:45.

Entry to the main State Department building is controlled and will require advance arrangements. Members of the public wishing to attend this meeting should, by Thursday, April 12, 2007, notify Karen Chen in the Bureau of Democracy, Human Rights, and Labor, telephone: 202–647–4648, of their name; date of birth; valid government-issued ID number (see below); citizenship; and professional affiliation, including address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others.

All attendees must use the ''C'' Street entrance of the Department, after being screened through the exterior screening facilities, and arrive at 9:30 a.m. to attend the Secretary's session. There will be no admittance after 9:50 a.m. until the completion of the Secretary's session. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire session.

For more information, contact Paul Lettow, Senior Advisor to the Under Secretary for Democracy and Global Affairs, Department of State, Washington, DC 20520, telephone: (202) 647–1189.

Dated: March 23, 2007.

Barry F. Lowenkron,

Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor Department of State.

[FR Doc. E7–5807 Filed 3–28–07; 8:45 am]

BILLING CODE 4710–18–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 07–02]

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m. (EDT), March 30, 2007, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

Agenda

Old Business

Approval of minutes of January 25, 2007, Board Meeting.

New Business

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, and Rates Committee.
A. Strategic Plan Discussion.
B. Customer service issues.
i. Agreements to serve two directly-served customers.
ii. Pricing during startup and testing.
iii. Future year price offer to a directly-served customer.
iv. Pilot time of use pricing.
4. Report of the Operations, Environment, and Safety Committee.
A. Authorization for the CEO to negotiate and approve a lease of a combined cycle electric generating facility.
B. Authorization for acquisition of combustion turbine and other equipment, real property, and initial engineering services for a potential generation facility.
5. Report of the Audit and Ethics Committee.
A. Selection of an external auditor.
6. Report of the Human Resources Committee.
7. Report of the Community Relations Committee.
8. Information Items.
A. Executive Selections.
B. Filing of condemnation cases in Bowling Green, Kentucky.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 23, 2007.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 07–1569 Filed 3–27–07; 11:22 am]

BILLING CODE 8120–08–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 from 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.

Royal Gorge Route Railroad

[Waiver Petition Docket Number FRA–2006–26757]

The Canon City and Royal Gorge Route Railroad (CRRX), seeks a waiver of compliance from certain provisions of the Safety Glazing Standards contained in 49 CFR part 223, for 14 passenger cars. The CRRX operates the 14 passenger cars in excursion train service over a distance of 11.75 miles of track and operates at a speed not exceeding 29 miles per hour. Most of the track traveled is at speeds not exceeding 20 miles per hour.

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 2006–26757) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. 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://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on March 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–5746 Filed 3–28–07; 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 from 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.

Wallowa Union Railroad

(Waiver Petition Docket Number FRA–2007–27413)

The Wallowa Union Railroad Authority (WURR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223 that requires certified glazing for three self-propelled rail diesel cars. The WURR operates as an excursion railroad at speeds not exceeding 30 miles per hour and in primarily rural areas.

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 2007–27413) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. 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://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on March 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–5747 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 1999–6439, Notice No. 18]

Adjustment of Nationwide Significant Risk Threshold

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Adjustment of the Nationwide Significant Risk Threshold.

SUMMARY: In accordance with 49 CFR part 222, appendix D, FRA is updating the Nationwide Significant Risk Threshold (NSRT). This action is needed to ensure that the public has the proper threshold of permissible risk for calculating quiet zones established in relationship to the NSRT. This is the first update to the NSRT since the final rule entitled ''Use of Locomotive Horns at Highway-Rail Grade Crossings'' was published on April 27, 2005 (70 FR 21844). This notice increases the Nationwide Significant Risk Threshold (NSRT) from 17,030 to 19,047.

DATES: The effective date is March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Ronald Ries, Office of Safety, RRS–25, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6299 or e-mail *Ronald.Ries@dot.gov*); or Ann Landis, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6064 or e-mail *Ann.Landis@dot.gov*).

SUPPLEMENTARY INFORMATION

Background

The NSRT is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. When communities are determining whether a specific crossing corridor can qualify as a quiet zone pursuant to 49 CFR part 222, the NSRT is used for comparison to the Quiet Zone Risk Index calculated for that specific crossing corridor to determine if that crossing corridor's Quiet Zone Risk Index falls above or below the nationwide average. In 2005, when the final rule entitled ''Use of Locomotive Horns at Highway-Rail Grade Crossings'' was published, FRA calculated the NSRT to be 17,030 (an increase from 15,424 as published in the interim final rule (68 FR 70586, December 18, 2003)) (70 FR 21844, April 27, 2005). In the final rule, FRA indicated that the NSRT would be updated annually. This is the first update to the NSRT since the final rule was published on April 27, 2005.

New NSRT

Almost two years have passed since the NSRT was last updated. (70 FR 21844, April 27, 2005). Consequently, FRA has recalculated the threshold based on the formulas identified in 49 CFR part 222, appendix D. FRA used collision data from 2001–2005.

The total number of gated, non-whistle ban crossings was 38,577.

The total number of collisions at these crossings was 2,388.

$$\text{Fatality Rate} = \frac{\text{Fatalities}}{\text{Fatal Incidents}} = \frac{364}{314} = 1.1592$$

$$\text{Injury Rate} = \frac{\text{Injuries in Injury Only Incidents}}{\text{Injury Only Incidents}} = \frac{795}{601} = 1.3228$$

Applying the fatality rate and injury rate to the probable number of fatalities and casualties predicted to occur at each of the 38,577 crossings identified and the predicted cost of the associated injuries and fatalities, FRA calculates the NSRT to be 19,047.

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49; 49 CFR part 222, Appendix D.

Issued in Washington, DC, on March 20, 2007.

Grady C. Cothen Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–5617 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–27411]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval

for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2007–27411

Applicants: Union Pacific Railroad Company, Mr. Thomas T. Ogee, Assistant Vice President, Engineering Design, 1400 Douglas Street, Mail Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance of a traffic control system on the Pocatello Yard Runner Track and the removal of Absolute Signal H1E, at approximately milepost 211.8, on UP's Pocatello Subdivision, in East Pocatello, Idaho. The proposed changes consist of the discontinuance of the signal system and removal of signal H1E.

The reason given for the proposed changes is that the signal is no longer needed for train operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the addresses listed above.

All communications concerning this proceeding should be identified by the docket number (FRA–2007–27411) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the 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://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 23, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–5745 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24037]

Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, and New Freedom Programs: Final Circulars

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Circulars.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its website final guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC), and New Freedom Programs.

DATES: *Effective Date:* The effective date of these circulars is: May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street SW., Room 9114, Washington, DC, 20590, phone: 202–366–4020, fax: 202–366–7951, or e-mail, *Henrika.Buchanan-Smith@dot.gov; Bryna.Helfer@dot.gov;* or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC, 20590, phone: 202–366–4011, fax: 202–366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Circulars

You may download the circulars from the Department's Docket Management System (*http://dms.dot.gov*) by entering docket number 24037 in the search field, and then clicking on ''reverse order.'' The circulars are the most recently posted documents. You may also download an electronic copy of the circulars from FTA's Web site, at *www.fta.dot.gov.* Paper copies of the circulars may be obtained by calling FTA's Administrative Services Help Desk, at 202–366–4865.

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I. Overview

This notice provides summaries of the Section 5310, JARC, and New Freedom program circulars, and addresses comments received in response to the September 6, 2006, **Federal Register** notice (71 FR 52610). These programs are affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59), signed into law on August 10, 2005.

The Section 5310 program provides funding, allocated by a formula, to States for capital projects to assist in meeting the transportation needs of older adults and persons with disabilities. The States administer this program. FTA is updating the existing Section 5310 circular, last revised in 1998, to reflect changes in the law.

The JARC program was authorized as a discretionary program under the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178, June 9, 1998), changed to a formula program under SAFETEA–LU and codified at 49 U.S.C. 5316. The JARC program provides formula funding to States and designated recipients to support the development and maintenance of job access projects designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. The JARC program also supports reverse commute projects designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities. FTA is

issuing a new circular for the JARC program.

SAFETEA–LU established the New Freedom Program under 49 U.S.C. 5317. The purpose of the New Freedom program is to provide new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. FTA is issuing a new circular for the New Freedom program.

FTA conducted extensive outreach to develop these final circulars. First, FTA held listening sessions in Washington, DC, in September 2005. Then, FTA requested comments related to the Section 5310, JARC, and New Freedom programs in a **Federal Register** notice published November 30, 2005, (70 FR 71950), and held listening sessions in five cities around the country. Subsequent to that notice, FTA published in the **Federal Register** on March 15, 2006 (71 FR 13456), proposed strategies for implementing these programs and requested comments on those strategies. In addition, FTA conducted an all-day public meeting on March 23, 2006, and held a number of meetings and teleconferences with stakeholders. To ensure that we heard from a broad range of stakeholders and interested parties, we extended the comment period of the March 15, 2006, **Federal Register** notice through May 22, 2006. FTA received more than 200 comments from State departments of transportation (DOTs), trade associations, public and private providers of transportation services, metropolitan planning organizations (MPOs), individuals, and advocates. Finally, we published the proposed circulars on our website (*www.fta.dot.gov*) and a **Federal Register** notice (71 FR 52610) on September 6, 2006, seeking public comment on the proposed circulars. FTA received an additional 70 comments in response to the September 6, 2006, notice and proposed circulars.

This document does not include the final circulars; electronic versions of the circulars may be found in the docket, at *http://dms.dot.gov,* docket number FTA–2006–24037, or on FTA's Web site, at *www.fta.dot.gov.* Paper copies of the circulars may be obtained by contacting FTA's Administrative Services Help Desk, at 202–366–4865.

FTA recognizes that implementation of the Section 5310, JARC and NF programs is still in the early stages. We expect to continue to learn from our experience in administering the grants and from grantees' experiences in implementing the provisions at the State and local level. FTA will be monitoring the implementation of the programs, and we continue to be open to comments and suggestions. We value input from grantees and others as we put these programs into action, and we urge interested parties to communicate with FTA regional offices regarding successes, questions, and concerns that may arise.

Effect of Interim Guidance

On October 31, 2006, FTA issued a **Federal Register** notice (71 FR 63838) stating that the proposed circulars, developed after extensive notice and comment, should be used as interim guidance for grant applications filed in FY 2007 to the extent possible. In the notice, FTA acknowledged that some grantees may have proceeded with the interim guidance published on March 15, 2006, and noted that grantees would be ''held harmless'' for applications submitted in FY 2007 ''based on coordinated planning or competitive selection processes substantially complete before the issuance of final guidance.'' The final circulars will take effect May 1, 2007; however, this ''hold harmless'' provision will continue to apply to FY 2007 grant applications for grantees who have substantially completed their planning or competitive selection processes using earlier guidance issued by FTA.

Three commenters requested that FTA allow the same flexibility in FY 2008 for developing the coordinated plan that we allowed in the interim guidance for FY 2007; namely, that planning agencies simply make ''good faith efforts'' to meet the planning requirements. The beginning of FY 2008 is a full two years after the passage of SAFETEA–LU, and FTA provided a phased-in approach for FY 2007. Because the law requires a coordinated plan, all grants obligated in FY 2008 and beyond must be in full compliance with the requirements of these circulars.

II. Chapter-by-Chapter Analysis

All three circulars generally follow the same format. Where possible, this notice discusses the chapters in general terms. Where the chapters vary significantly, as in Chapters III and IV, the discussion is specific to each program. This section briefly describes the content of each chapter and addresses public comments received in response to the September 6, 2006, notice. In addition to making changes to the circulars in response to public comments, FTA has edited for clarity and consistency among the circulars.

One commenter suggested that FTA develop one coordinated circular for Section 5310, JARC, and New Freedom, especially since much of the material in the circulars is the same, and only a couple of chapters have program-specific information. FTA determined that many recipients would only receive funds from one of the three programs, and did not want to burden those recipients with unnecessary information; therefore, we developed three distinct circulars, one for each program.

A. Chapter I—Introduction and Background

Chapter I is an introductory chapter in all three circulars. This chapter covers general information about FTA and how to contact us, provides a brief review of the authorizing legislation for the specific program (i.e., Section 5310, JARC, or New Freedom), provides information about Grants.gov, includes definitions applicable to the specific program, and provides a brief program history.

Several commenters had suggestions for additional definitions of terms. Where we agreed with those suggestions, we have incorporated them into the circulars. For example, we added a definition for ''elderly individuals'' to the Section 5310 and New Freedom circulars, and we added a definition for ''chief executive officer of a State'' to all three circulars. We did not, however, change the definitions of ''individual with a disability,'' ''eligible low-income individual,'' or ''welfare recipient.'' FTA acknowledges that there are many definitions for these terms. Since the circulars were developed under the authority of Federal transit law, we have decided to use the definitions in the transit law—49 U.S.C. Chapter 53. We also did not include definitions for ''unavailable, insufficient, or inappropriate'' public transportation services in the Section 5310 circular, as we believe the dictionary definitions of those terms are sufficient. We did not add, in the definition of coordinated plan, that passengers with disabilities be a part of the planning process. We have described the requirements for outreach and stakeholder input in Chapter V. Further, we declined to include local Workforce Investment Boards in the definition of human service transportation (as we did not include any specific agencies in that definition), but we did reference the Board in Chapter V in all three circulars.

One commenter asked FTA to identify the source data for ''welfare recipients'' for apportionment of JARC funds. The Census identifies persons whose income is at 150 percent of poverty level and below—this includes welfare recipients. The U.S. Department of Health and Human Services data on welfare recipients are not disaggregated in such a way that FTA could use the data for apportionment purposes; therefore, we use Census data for persons living at 150 percent of poverty or below.

B. Chapter II—Program Overview

Chapter II provides more detail about the programs. This chapter starts with the statutory authority for the specific program, including how authorized funds are apportioned. One commenter suggested that the amounts authorized for fiscal years 2006 through 2009 should not be part of the circulars, as the circulars are expected to be in effect past the authorization period of SAFETEA–LU. We agree, and have removed the authorized amounts, but retained the information regarding how the funds are apportioned. The chapter then discusses the goals of the program. We have added the performance measures for each program to this chapter, and, in response to comments, clarified that the indicators specified are targeted to capture program information on a National level—these measures will not be used to assess individual grants.

Next is a brief description of the State or recipient's role and FTA's role in program administration, followed by an overview of how the specific program relates to other FTA programs, and a description of coordination with other Federal programs through the Federal Interagency Coordinating Council on Access and Mobility (CCAM). The section on coordination has been updated to reflect CCAM's recent adoption of policies on coordinated planning and vehicle sharing. In addition, in response to a commenter, the New Freedom circular contains a reference to joint guidance on funding resources regarding access to work, which was originally only in the proposed JARC circular.

Chapter II is an ''overview'' chapter that contains valuable information but not in the detail that later chapters cover. Some commenters requested that more information be included in this chapter; however, we believe it is more appropriate to include detail in later chapters. We have, however, provided more references to later chapters to direct readers toward the detailed information they are seeking.

C. Chapter III—General Program Information

Due to the differences in program requirements, the discussion of this chapter is divided by program.

1. Elderly Individuals and Individuals With Disabilities (Section 5310)

The final Section 5310 circular hereby supersedes the Section 5310 circular last revised in 1998 (FTA Circular 9070.1E), and incorporates changes in transit law. Significantly, Section 5310, as amended by SAFETEA–LU, permits the use of up to 10 percent of funding for expenses related to program administration, planning, and technical assistance (consistent with FTA's longstanding administrative practice). The law increases coordination requirements and allows the local funding share to include amounts available for transportation from other non-DOT Federal agencies, as well as Federal lands highway funding. SAFETEA–LU also establishes a pilot program that allows seven States to use up to 33 percent of their Section 5310 funds for operating expenses. One commenter requested that the pilot program be referenced in the circular; FTA issued general guidance for the pilot program in a **Federal Register** notice (70 FR 69201, Nov. 14, 2005) and announced the States selected to participate in a later **Federal Register** notice (71 FR 59101, Feb. 3, 2006). Since the pilot program has its own guidance, FTA did not include any specific guidance regarding this program in the final circular, however, we did make note of the pilot program in Chapter III.

Chapter III addresses State agency designation, apportionment of Section 5310 funds, when the funds are available to the States, under what circumstances funds may be transferred, consolidation of grants to insular areas, who is an eligible subrecipient, administrative expenses, eligible capital expenses, and Federal/local match requirements. This information compares to information found in Chapter II of the 1998 circular.

FTA made two changes to this chapter in response to comments. First, in paragraph 7, ''State Administrative Expenses,'' we added a provision allowing the administrative funds for Section 5310, JARC, and/or New Freedom to be combined to support activities such as coordinated planning that are common to all three programs. In the September 6, 2006, notice, we stated this was allowable, but we did not include this information in the proposed circular. Second, in paragraph 9, ''Federal/Local Matching Requirements'' we removed the reference to specific Federal programs and instead used generic terms to describe the types of programs that are a potential source for local match, including employment, training, aging, medical, community services, and rehabilitation services.

One commenter requested that the sliding scale table for Federal match, which addresses the ''Sliding Scale Rate for Transit Capital Grants'' include the ''increased Federal share for operating assistance'' for States participating in the Section 5310 pilot program. Section 3012 of SAFETEA–LU, which established the pilot program, caps the Federal share for operating expenses for this program at 50 percent (*see* Section 3012(b)(3)), so the sliding scale rate does not apply to the pilot program. As stated previously, FTA issued general guidance for the pilot program in a **Federal Register** notice (70 FR 69201, Nov. 14, 2005) and announced the States selected to participate in a later **Federal Register** notice (71 FR 59101, Feb. 3, 2006). Individuals interested in this program should refer to those documents.

Most comments on this chapter related to eligible activities. FTA proposed that eligible capital expenses would remain substantially the same as in the 1998 circular, with the addition of mobility management activities as eligible expenses. We pointed out in the September 6, 2006, **Federal Register** notice and the proposed circular that the list of eligible activities is illustrative and not exhaustive. Two commenters wanted to see mention of contracted service, or purchase-of-service agreements as an eligible capital expense. This item is in paragraph 8(m). One commenter asserted that any Intelligent Transportation Service (ITS) project should be eligible under all three programs. ITS is mentioned in paragraph 8(o), and is further identified as a project that is part of mobility management under paragraph 8(p)(7). One commenter asked FTA to reconsider funding the coordinated plan under mobility management. As we explained in the September 6, 2006, notice, mobility management is an eligible expense and includes project planning activities. However, any planning project must be derived from a coordinated plan. Therefore, mobility management funds may not be used to develop the coordinated plan. Mobility management activities are a capital expense funded at an 80/20 Federal/local funding share pursuant to 49 U.S.C 5310(c).

One commenter explored the differences among the Section 5310, JARC, and New Freedom programs, and seemed to disagree with the fact that States are not required to competitively select Section 5310 programs. The commenter also seemed to imply that having Section 5310 projects included in the Statewide Transportation Improvement Program (STIP) and the Transportation Improvement Program (TIP) was a new requirement. Under Section 5310, States allocate funds to private non-profit organizations or governmental authorities. Most States choose to use a competitive process, and FTA encourages the practice, but the law does not require competitive selection for 5310 as it does for JARC and New Freedom. All grant funds are subject to planning requirements; Section 5310 projects have always had to be part of the STIP and TIP.

One commenter wanted to know if States could ''pool'' their JARC, New Freedom, and Section 5310 funds into a combined set of funds, provided that they could show that the priorities of all programs are being met. The transfer provisions in SAFETEA–LU do not permit such a pooling of funds; funds may not be ''flexed'' from one program to another. One commenter asserted that the authority granted in SAFETEA–LU to designated urbanized area recipients to develop their own competitive selection criteria for apportioned Section 5316 (JARC) and 5317 (New Freedom) funds could be extended to the Section 5310 program if States were permitted to sub-apportion some of their 5310 funds to the designated recipient. FTA notes again that while most States conduct a competitive selection process for Section 5310, there is no statutory competitive selection requirement for Section 5310. Second, States may allocate funds to government authorities (e.g., designated recipients) only when the government authority is approved by the State to coordinate services for elderly individuals and individuals with disabilities, or if the authority certifies that there are no non-profit organizations readily available to provide the special services, which is unlikely in a large urbanized area.

2. Job Access and Reverse Commute (JARC) and New Freedom

The JARC and New Freedom programs have similar statutory requirements, so Chapter III, with the exception of Eligible Activities, is the same or similar for each circular. This chapter covers recipient designation, including designation in urbanized areas where there are multiple recipients; the role of the designated recipient; eligible direct recipients and subrecipients; apportionment, availability and transfer of funds; consolidation of grants to insular areas; recipient administrative expenses; eligible activities; and Federal/local matching requirements.

a. Recipient Designation

FTA proposed, and adopts in the final circulars, that the designated recipient for JARC and/or New Freedom in urbanized areas over 200,000 in population *may* be the same as the designated recipient for Section 5307 (Urbanized Area Formula Grant Program) funds; however, it does not have to be the same designated recipient. The MPO, State, or another public agency may be a preferred choice based on local circumstances. The designation of a recipient shall be made by the governor in consultation with responsible local officials and publicly owned operators of public transportation, as required in 49 U.S.C. 5307(a)(2). Since the State is a public entity, a single State agency could be designated as the recipient of JARC and/or New Freedom funds apportioned to large urbanized areas. The recipient for JARC and New Freedom funds will apply to FTA for these funds on behalf of subrecipients within the recipient's area. Regardless of whether the JARC and New Freedom recipient is the same as or different from the Section 5307 designated recipient, the governor shall issue new designation of JARC and New Freedom recipient letters. Designations remain in effect until changed by the governor by official notice of redesignation to the appropriate FTA Regional Administrator.

In urbanized areas with populations less than 200,000 and in other than urbanized areas, the State is the designated recipient for JARC and New Freedom funds. The governor designates a State agency responsible for administering the funds and notifies the appropriate FTA regional office in writing of that designation. The governor may designate the State agency receiving Other Than Urbanized Area formula funds (Section 5311) and/or Section 5310 funds to be the JARC and/or New Freedom recipient, or the governor may designate a different agency.

FTA encourages the designation of a single designated recipient for each urbanized area over 200,000 in population, in order to streamline the administration of the program and foster coordination although some commenters asserted that a single designated recipient should be a requirement. However, FTA respects the complexity of geographical and institutional histories of different areas, so this remains a local decision. Further, nothing precludes the designation of multiple designated recipients. When more than one recipient is designated for a single large urbanized area, the designated recipients must agree on how to divide the single apportionment to the urbanized area and notify FTA annually of the division and the geographic area each recipient will be responsible for managing. For multi-State urbanized areas of less than 200,000 in population, the designated recipient for each State is responsible for that State's portion.

In response to comments, FTA made two changes in order to clarify the responsibilities of designated recipients and direct recipients. First, we note that in some large urbanized areas, the competitive selection process may result in projects being awarded to a transit agency that is not the designated recipient for the JARC or New Freedom programs but is a Section 5307 designated recipient. If this happens and the 5307 designated recipient wants to apply directly to FTA for a JARC or New Freedom grant, the JARC or New Freedom designated recipient must enter into a supplemental agreement with the Section 5307 recipient. The supplemental agreement will release the designated recipient from any liability under the grant agreement.

Second, we note that if a State transfers JARC or New Freedom funds to a Section 5307 recipient in a small urbanized area (population between 50,000 and 200,000) for administration of a competitively selected project, the transfer of funds also transfers the oversight responsibilities from the State to the grant recipient. In this situation, the State will only be responsible for the program requirements (e.g., coordinated planning, competitive selection) and data collection for annual reporting purposes. When the funds are transferred to the 5307 direct recipient, the 5307 direct recipient could apply to FTA directly for the funds; however, the application must be submitted as a separate grant. For oversight purposes, FTA will include the JARC/New Freedom projects in the triennial review of the 5307 direct recipient.

One commenter encouraged FTA to accept Section 5307 designation for the JARC and New Freedom programs. These are new programs, and the recipients must go through the process of being designated by the Governor. If a State has a ''blanket certification'' that the State is the designated recipient for all FTA programs, the State simply needs an amendment to the certification

or an affirmation that the State or other designated recipient will be the designated recipient for all FTA programs, including JARC and New Freedom.

Some commenters expressed concern about the ''administrative burden'' associated with a designated recipient's oversight responsibilities of subrecipients, some of which may be private operators. One commenter suggested that the burden of certifying compliance with Federal requirements could discourage selection of non-governmental entities for funding, and another suggested that private operators selected for funding should report directly to FTA, and not to the designated recipient. In response, FTA notes that the competitive selection process must be open and fair—criteria set by the designated recipient cannot discourage private participation. In addition, oversight of subrecipients is the responsibility of the designated recipient.

b. Apportionment, Availability and Transfer of Funds

FTA did not make any substantive changes to these sections of the circulars. One commenter wanted to confirm that recipients must obligate apportioned funds within the year of apportionment plus two years, and once obligated, they may be spent sometime after that period of availability. That is correct; only if funds remain unobligated after the period of availability will they lapse and be re-apportioned by FTA. This includes funds that have been administratively transferred to a Section 5307 recipient—the funds must be obligated within the period of availability or they will be re-apportioned by FTA. One commenter suggested that if JARC funds remain unobligated due to an absence of applications or insufficient local matching funds, States should have the flexibility to transfer those unobligated JARC funds to rural or large urbanized areas, if unmet needs exist in those areas. Another commenter wanted to know if there are any mechanisms to transfer JARC or New Freedom funds between urbanized and nonurbanized areas, or between urbanized areas. As stated in 49 U.S.C. 5316(c)(3), a State may use JARC funds apportioned for small urbanized and rural areas for projects serving either of these areas of the State, if the State's chief executive officer certifies that all of the objectives of JARC are being met in the specified areas. Funds may also be transferred for use anywhere in the State including large urbanized areas, if the State has established a statewide program for meeting JARC program goals. There is no authority to transfer funds apportioned to large urbanized areas to small urbanized or rural areas.

New Freedom funds cannot be transferred from one population area (such as rural) to another population area (such as small urbanized) within a State. While such a transfer provision is statutorily permitted under the JARC program, this provision is not included in the New Freedom program. Therefore, FTA cannot allow this transfer of funds. States may, however, transfer JARC and New Freedom funds to Section 5307 or Section 5311(c) to ease program administration, as long as the transferred funds are used for competitively selected JARC or New Freedom projects, respectively. Transfer requests must be submitted to the appropriate FTA Regional Administrator in writing. One commenter suggested that FTA permit transfers of funds between the JARC and New Freedom programs. The law does not permit such a transfer; funds must be used for the program for which they were apportioned except in insular areas.

c. Recipient Expenses (10 Percent) for Administration, Planning, and Technical Assistance

Up to 10 percent of program funds are available for the administration, planning, and technical assistance of Section 5310, JARC, and New Freedom programs. These funds may be used directly by the designated recipient or they may be passed through to subrecipients for these purposes. For example, the designated recipient may award grants to local areas to support the development of the coordinated plan. The competitive selection process is part of ''administering'' the programs and, therefore, these funds may be used to conduct the competitive selection process.

Several commenters expressed concern that 10 percent of the amount apportioned may not be sufficient to administer the program. FTA notes that there is no local match requirement for this funding, and we revised the final circulars to state that the administrative funding available under Section 5310, JARC, and New Freedom may be combined in order to develop a single coordinated plan to meet the needs of persons with disabilities, older adults, and low-income individuals. Further, as we stated in the September 6, 2006, notice, FTA treats the limitation on administrative funds as applicable to funds apportioned to recipients over time, not necessarily to the apportionment for a particular fiscal year. A recipient may accumulate the ''entitlement'' to administrative funds for the year of apportionment plus two years to augment the funds available for a special administrative need in a subsequent year.

One commenter asked FTA to reconsider funding the coordinated plan under mobility management. As we explained in the September 6, 2006, notice, (and noted in the Section 5310 discussion of eligible activities, above) mobility management is an eligible expense and includes project planning activities. However, any planning project must be derived from a coordinated plan. Therefore, mobility management funds may not be used to develop the coordinated plan. Mobility management activities are funded at an 80/20 Federal/local ratio pursuant to the applicable program share requirements under Title 49 U.S.C. Chapter 53.

d. JARC Eligible Activities

Section 5316, as amended by SAFETEA–LU, requires that JARC projects selected for funding be derived from a coordinated plan (see Chapter V) and that grants will be awarded on a competitive basis (see Chapter IV). Funds are available for capital, planning, and operating expenses that support the development and maintenance of transportation services designed to transport low-income individuals to and from jobs and activities related to their employment, and for reverse commute projects. The list of eligible projects included in the final circular is consistent with the use of funds described in FTA's April 8, 2002, **Federal Register** notice for JARC Program Grants (67 FR 16790). As requested by commenters, this list of eligible activities is illustrative, not exhaustive. In the final circular, we added reverse commute activities to the list of eligible activities. That is the only change we made to JARC eligible activities from the proposed circular to the final circular.

Commenters generally disagreed with FTA's proposal that transit passes should not be an eligible expense under the JARC program. In addition to comments to the docket, on February 4, 2007, FTA received a letter from a trade association expressing their support for funding transit passes through the JARC program. FTA posted this letter to the docket. FTA strongly supports the implementation of transit pass programs and believes that such activities offer low-income persons affordable transportation opportunities, particularly during periods when transitioning from public assistance to employment. JARC legislation does

explicitly provide for the promotion of such transit pass programs for low-income persons as an eligible JARC expense, but the statute does not expressly provide language for the actual funding of transit passes. The JARC program instead concentrates on building additional transportation capacity to connect low-income persons to jobs and support services and to provide connections to suburban employment sites.

FTA notes that many other Federal human service partner programs are available to support customer fares on existing transit services. Examples include the Temporary Assistance for Needy Families (TANF) program, Workforce Investment Act funds, and other Federal, state, and local human services programs that assist individuals. These opportunities may be pursued within the new locally developed coordinated public transit-human services planning process where many of these agencies and organizations will be participating stakeholders. Further, the Internal Revenue Code at 26 U.S.C. 132(f) allows employers to pay for transit passes and the employee does not pay taxes on this transportation fringe benefit. Promotion of transit pass programs remains an eligible expense.

Several commenters expressed an interest in FTA approving all car ownership program models as eligible JARC projects, including car ownership programs that are not loan programs, such as rehabilitation or donation programs. The commenters requested that FTA remove the shared ride participation requirement, and remove the requirement that the agency administering the program hold the lien on the title of the vehicle, since the lending institution usually holds title.

FTA appreciates the interest of commenters in car ownership programs. In keeping with the original April 8, 2002, **Federal Register** notice, FTA has decided to continue funding auto loan programs but not rehabilitation or donation programs. In addition, FTA will continue the shared-ride requirement, which maximizes the benefits of the Federal investment to low-income populations. As for the lien on the title of the vehicle, the agency administering the loan program can often be a lien holder, in addition to the lending institution. FTA believes this is the best way to ensure satisfactory continuing control, which is a requirement under Section 5307.

One commenter asserted they should be able to prioritize existing JARC projects for funding. FTA believes this is a local decision made through the planning process. Some existing JARC projects will be selected for funding while others may not, especially if new projects are considered more cost-effective and/or better serve a need of a community.

e. New Freedom Eligible Activities

Section 5317, as amended by SAFETEA–LU, requires that New Freedom projects selected for funding be derived from a coordinated plan (see Chapter V) and that grants will be awarded on a competitive basis (see Chapter IV). Funds are available for capital, planning, and operating expenses that support new public transportation services and new public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA), that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. As requested by commenters, the list of eligible activities is illustrative, not exhaustive.

FTA proposed, in our September 6, 2006, **Federal Register** notice, that ''new'' service is any service or activity that was not operational before August 10, 2005, (the date of passage of SAFETEA–LU) and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Plan (TIP) or the State Transportation Improvement Plan (STIP). In other words, if not for the New Freedom program, these projects would not be considered for funding and proposed service enhancements would not be available for individuals with disabilities. Some commenters were concerned that this definition of ''new'' would eliminate projects that were in place before August 10, 2005, but terminated due to a lack of funding prior to August 10, 2005. To address this concern, we have changed the wording to reflect that projects not operational *on* August 10, 2005, and without a dedicated funding source as evidenced by inclusion in the TIP or STIP at that time are considered ''new.'' This will allow projects discontinued prior to August 10, 2005, to be reinstated if the coordinated planning process determines the service is needed. Inclusion of projects in the metropolitan or statewide long-range transportation plans does not constitute a funding commitment. However, once a project is included in the TIP/STIP, it has an identified funding source. Therefore, projects identified in a long-range metropolitan or statewide plan may be eligible for New Freedom funding, but not projects in the four-year program period of the TIP/STIP.

One commenter asked how long projects could be considered new; in other words, if a multi-year project is successful, does it lose its ''new'' status at some point? In response, eligible projects funded by New Freedom may continue to be eligible for New Freedom funding indefinitely as long as they remain part of the coordinated plan.

Many commenters objected to FTA's interpretation that New Freedom projects are those that are both ''new'' and ''beyond the ADA,'' while others were in favor of the policy position set forth in the proposed circular. In addition, FTA received feedback from both Administration and Congressional offices in support of the proposed policy that New Freedom projects be ''new public transportation services beyond those required by the ADA'' and ''new public transportation alternatives beyond those required by the ADA.'' Therefore, we have not changed the description of eligible activities in the final circular. The only change we made in eligible activities was to clarify that Intelligent Transportation Services is an eligible project, and the incremental cost (if any) of changing the basic mode of service of an ADA paratransit system from curb-to-curb to door-to-door is an eligible project.

One commenter asserted that, in rural areas, it was difficult to conceptualize any new public transportation that is ''beyond the ADA.'' The commenter sought more examples of eligible rural New Freedom public transportation projects where the service in those areas is demand-responsive. One commenter wanted to know if demand-responsive or flex route services would be eligible for New Freedom funding, or if only fixed route and ADA paratransit were eligible. FTA acknowledges there are limits to the use of New Freedom funds in rural systems that operate only demand-response service; however, the substantial increase in funding to the Section 5311 program under SAFETEA–LU should be sufficient to cover many of the needs of these communities. Certainly vehicle modifications that are beyond the ADA, such as equipment to accommodate over-sized wheelchairs, or increased securement locations on vehicles, would be an eligible New Freedom expense on demand-response vehicles as well as other public transportation vehicles. Travel training and mobility management activities may be valuable public transportation activities in rural areas, as would the addition of new feeder service to outlying transit stations for which ADA complementary paratransit is not

required, such as commuter rail stations, express or commuter bus service, or an intercity bus stop or rail station. In addition, alternatives to public transportation such as accessible taxis and volunteer driver programs can be invaluable to rural residents. FTA encourages rural operators (as well as urbanized area operators) to use the planning process to create innovative solutions to meet the needs of individuals with disabilities in their communities.

One commenter asserted that the current U.S. DOT ADA proposed rulemaking (71 FR 9761, Feb. 27, 2006) introducing ''reasonable modification'' of policies and practices will essentially nullify the New Freedom program as it will be difficult for any service to be beyond the ADA. FTA disagrees with this assertion. As we understand the proposed rulemaking, it would call on transportation providers to make exceptions to otherwise appropriate general policies and practices on a case-by-case basis where needed to make service available to a particular individual. The purpose of New Freedom, on the other hand, is to enhance the availability of transportation services to persons with disabilities in a community.

One commenter asserted that the ADA regulations allow same-day service for ADA paratransit but do not require it, and similarly, allow door-to-door service but do not require it. The commenter asked why the implementation of same day service would be considered an eligible New Freedom project but door-to-door service would not. As we stated in the September 6, 2006, notice, the ADA regulation requires ''origin-to-destination'' service, and U.S. DOT guidance issued on September 1, 2005, reiterates the ''origin-to-destination'' language and notes that, ''service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.'' The difference is that the provision of door-to-door service as a reasonable modification to make service possible to a particular individual in a system that otherwise provides curb-to-curb service may allow someone to use the service who otherwise could not access ADA paratransit at all. Same day service is an enhancement that makes the system more convenient and easier to use for all passengers.

FTA is persuaded, however, that the incremental cost increase (if any) of changing the basic mode of an operator's entire ADA paratransit service from curb-to-curb to door-to-door could be considered eligible for New Freedom funding in the same manner as same-day service, inasmuch as the Department's ADA regulations and related guidance do not specify a basic mode of service beyond origin-to-destination. Therefore, if a change in mode of service from curb-to-curb to door-to-door is new, and is part of the coordinated plan, the incremental cost increase (if any)—and *only* the incremental cost increase—is an eligible expense. FTA has modified the eligible project list accordingly. The availability of New Freedom funds for this purpose does not imply that any transit system must change its service to door-to-door; it is simply one option among many possible projects that may be funded with New Freedom funds if it is part of the coordinated plan. A system that maintains a general curb-to-curb policy may not use New Freedom funds to provide a ''reasonable modification'' to the general policy of curb-to-curb to provide door-to-door service to individuals on a case-by-case basis.

Two commenters suggested that ''travel training'' should be included as an eligible project under mobility management, and therefore eligible for funding as a capital project. Travel training is listed as an eligible project, both independently and as part of mobility management. Travel training is eligible for up to an 80 percent Federal match.

f. Federal/Local Match Requirements

A grant for a capital project under the JARC and New Freedom programs may not exceed 80 percent of the net cost of the project. A grant for operating costs under these programs may not exceed 50 percent of the net operating costs of the project. One commenter expressed concern that a 50 percent match for operating expenses for New Freedom may prove to be too high for smaller organizations; however, these limits are set by law. (*See* 49 U.S.C. 5316(h) and 5317(g)). Finally, a grant for administrative expenses incurred by these programs (up to 10 percent of the annual apportionment), may be fully funded by FTA. The circular lists the potential sources of local funding match, including the types of other Federal programs that provide funding for transportation.

One commenter noted that the Section 5310 and Section 5311 circulars allow local match to come from DOT's Federal lands highways program, and suggested that Federal lands highways funds be available as local match for JARC and New Freedom, as well. The law specifically permits Federal lands highways funds to be used as local match for Sections 5310 and 5311; however, this same provision is not in the JARC or New Freedom authority. Therefore, Federal lands highways funds may not be used as local match for the JARC and New Freedom programs.

One commenter asserted that if there are other Federal funding sources that can be used as local match for the JARC program, the circular should list the criteria which would qualify agencies to receive funding from these sources. Federal programs supporting human service transportation are listed on the United We Ride Web site: *www.unitedweride.gov.* We have included this link in the final circulars in the discussion of local match.

D. Chapter IV—Program Development

Due to the differences in program requirements, the discussion of this chapter is divided by program.

1. Elderly Individuals and Individuals With Disabilities (Section 5310)

Chapter IV provides an overview of planning requirements (described in further detail in Chapter V); describes the program of projects (POP), including the approval of and revisions to the POP; and describes pre-award authority, labor protections, and when public hearings are required. This information compares to information found in Chapter III of the 1998 Section 5310 circular (FTA C 9070.1E).

FTA proposed and adopted four changes to this chapter. First, the planning requirements now reference the coordinated plan required under SAFETEA–LU. Second, the 1998 circular states that grants are awarded on a quarterly release cycle; the new circular reflects FTA's current commitment to promptly process grants upon receipt of a complete and acceptable grant application. Third, under ''Revisions to Program of Projects,'' FTA included a new paragraph for when grant revisions need to be made in FTA's Transportation Electronic Award and Management (TEAM) system. And fourth, the ''Public Hearing'' section clarifies and provides the statutory authority regarding public hearing requirements.

Two commenters suggested that contact information for subrecipients should be added to the list of information that FTA receives regarding the POP, including the specific geographical area served. As a result of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, Sept. 26, 2006), all Federal agencies are required to publish to a public Web site information regarding recipients of Federal grants, contracts, and other

forms of financial assistance equal to or greater than $25,000. The Office of Management and Budget (OMB) and U.S. DOT will be developing criteria to allow FTA to report on grants awarded to subrecipients. To prepare for this new government-wide requirement, FTA is adding the location of the subrecipient (city, State and Congressional district) and primary location of project performance under the award to the subrecipient information for all three programs. Specific contact information (i.e., addresses, phone numbers, e-mail addresses) will not be included, but the name and location of the subrecipient will be, thus allowing interested parties to find contact information for subrecipients.

2. Job Access and Reverse Commute (JARC) and New Freedom

The JARC and New Freedom programs have the same statutory requirements for the areas covered by this chapter, so Chapter IV is the same for both circulars. This chapter provides a summary of the planning and coordination requirements (described in further detail in Chapter V); describes the competitive selection process and what constitutes a fair and equitable distribution of funds; describes the program of projects (POP), including approval of and revisions to the POP; and addresses certifications and assurances and pre-award authority.

Chapter IV includes guidance on how a designated recipient should conduct the competitive selection process. Some commenters continue to have concerns about a perceived ''conflict of interest'' if the designated recipient for JARC or New Freedom is also bidding on a project. The designated recipient is, by law, responsible for the competitive selection process. The designated recipient may take steps it deems appropriate to mitigate any conflict of interest, such as contracting out the competitive selection process. FTA declines to require designated recipients to establish conflict of interest provisions.

One commenter disagreed with the concept of competitive selection, stating that the development of a coordinated plan, coupled with current local, regional, and State coordination of projects provides an adequate means of coordinating projects and programs. The law requires that designated recipients and States conduct a ''solicitation for applications for grants to the recipient and subrecipients under [the JARC and New Freedom programs].'' (*See* 49 U.S.C. 5316(d) and 5317(d). One commenter wondered for what purpose is the competitive selection; the purpose is to select recipients and subrecipients that will carry out JARC and New Freedom projects.

Another commenter thought that once the planning process is complete and projects have been selected for funding, it would be reasonable to have existing FTA grantees subcontract with other providers, thus keeping the grant administrative process to a minimum. This commenter asserted that allowing anyone and everyone to compete for eligible projects will be cumbersome in oversight, coordination, and contradict the original purpose of streamlining processes. In our proposed circulars, FTA proposed significant flexibility within the process to address concerns such as these, and we have retained that flexibility in the final circulars. It is important to understand that projects to be funded are not selected through the planning process. Projects are prioritized, but selection occurs competitively. Anyone can compete for projects, including private non-profit and private for-profit companies. Entities selected to carry out the projects will be subrecipients, not subcontractors.

One commenter suggested that, for New Freedom funds, FTA should include in the selection process a requirement that a review of other funding sources occurs in order to ensure that limited New Freedom funds are not spent where other funds could be used. FTA declines to explicitly make this a requirement, but we note that a coordinated plan includes an assessment of existing resources and services—we expect this to be part of the plan. FTA strongly encourages communities to include potential strategies that could be funded from multiple sources, including other Federal programs.

Several commenters objected to the proposed two-year competitive selection cycle, and some suggested that the competition should occur at a ''reasonable interval'' based on local circumstances. In response, FTA has changed this so the competition may be held annually or at intervals up to three years as determined by the designated recipient based on local needs. Three years allows a sufficient period to determine if a multi-year project is successful and should be continued. If the competitive selection process is less frequent than every three years, it is possible that new needs will not be addressed, and interested participants may be shut out of the process. FTA encourages ongoing efforts of looking at how the needs are being met, and if the project selected is meeting the needs identified in the plan.

Several commenters wanted to see further clarification on what constitutes a ''fair and equitable'' distribution of funds. One commenter asked FTA to clearly state that fair and equitable does not mean funds are distributed on a pro rata basis, while another wanted to ensure ''equal'' allocation of resources among projects and communities. Several commenters asked about geographic distribution, in terms of evaluating ''areas'' rather than ''projects'' (example two in the selection process examples), and in terms of Title VI and Environmental Justice. As we stated in the September 6, 2006, notice, (and we have added this language to the final circular) equitable distribution refers to equal access to—and equal treatment by—a fair and open competitive process. The result of such a process may not be an ''equal'' allocation of resources among projects or communities. FTA added ''geographic distribution'' to the list of selection criteria that may be considered by designated recipients and States, but it is possible that some areas may not receive any funding at the conclusion of the competitive selection process. A successful competitive selection process will, however, minimize perceptions of unfairness in the allocation of program resources.

Some commenters had questions about the examples we provided in the proposed circulars. We have attempted to clarify the language in response to comments. Two commenters noticed that there was no language in the proposed circulars requiring designated recipients to choose projects/needs in order of the priority established in the coordinated plan. While the designated recipient certainly should consider the priorities identified in the plan, there may be times when the resources available are not sufficient to fund the first or second priorities listed. In cases such as these, it would be appropriate for the designated recipient to look at the resources available and fund what is possible, which may mean going further down the list of prioritized projects or strategies than the first one or two items. Therefore, we decline to require designated recipients to choose projects/needs in order of priority identified in the coordinated plan.

The rest of this chapter addresses the Program of Projects (POP). In response to commenters, we added some clarifying language and language addressing the Federal Funding Accountability and Transparency Act of 2006 (discussed above). Two commenters were concerned that categorizing projects as ''A'' or ''B'' could delay or deny funding. A POP is

necessary at the time of the grant application, but not at the time of developing the planning documents, unless a local area's process requires projects to be listed in the STIP at the project level rather than at the program level. Since projects can be described at either the project level or the program level, if the projects are listed in the STIP at the program level, then neither the STIP nor the TIP would need to be amended when projects are moved from category ''B'' to category ''A.'' ''A'' and ''B'' categories differentiate between levels of readiness. This allows the designated recipient flexibility and reduces delays in FTA's grant process. Additional comments received about inclusion of projects in the STIP/TIP will be addressed in Chapter V.

E. Chapter V—Coordinated Planning

The Section 5310, JARC, and New Freedom programs all require the development of a locally developed, coordinated public transit-human services transportation plan (''coordinated plan''). Each of the circulars for these three programs has the same requirements for coordinated planning; therefore, Chapter V is identical in all three circulars. This chapter includes the definition of a coordinated plan, how a coordinated plan is developed, the level of public participation that is expected and strategies for inclusion, and the relationship of the coordinated plan to other planning processes.

FTA made changes to this chapter as a result of comments received. The required elements of a coordinated plan have been modified for clarification purposes. For example, in paragraph 2(b)(3), we have expanded the element as follows: ''[s]trategies, activities *and/or projects* to address the identified gaps *between current services and needs, as well as opportunities to improve* efficiencies in service delivery.'' We made additional clarifying changes to paragraph 4, ''Relationship to Other Transportation Planning Processes.'' With regard to the relationship of the coordinated plan with other planning processes, we have added a new Appendix E to the Section 5310 circular, and Appendix G to the JARC and New Freedom circulars, and included a schematic drawing to clarify the timing and other elements related to the coordinated planning process, competitive selection, POP, and inclusion of projects in the STIP/TIP.

One commenter recommended allowing a ''community'' to be defined as a separate area within a larger urbanized area where different transportation solutions are necessary, and allow the designated recipient to be made up of local municipalities. Another commenter asked if a ''county'' could be a local area for planning purposes. As we stated in the September 6, 2006, notice, the decision as to the boundaries of the local planning areas should be made in consultation with the State, designated recipients, and/or the MPO. In addition, ''designated recipient'' is defined in the law as an entity designated, in accordance with planning processes, by the chief executive officer of a State, responsible local officials, publicly owned operators of public transportation, or a State.

Several commenters expressed concern that 10 percent of the amount apportioned may be insufficient to administer the program. Some requested that FTA allow program funds to be used for the initial coordinated plan. As we stated above, the law allows up to 10 percent of funds to be used for administering the program, and development of the coordinated plan is part of that program administration—program funds may not be used to fund the coordinated plan. FTA notes that there is no local match requirement for this funding, and we revised the circulars to state that the administrative funding available under Section 5310, JARC, and New Freedom may be combined in order to develop a single coordinated plan to meet the needs of persons with disabilities, older adults, and low-income individuals. Several of the strategies outlined in Chapter V offer approaches that may be done with a range of resources based on local interest and need. Further, administrative funds for the coordination strategies discussed in Chapter V may be supplemented with Sections 5303 and 5304 Metropolitan Planning and Statewide Planning funds, Section 5307 formula funds, and administrative funding available under Section 5311.

One commenter suggested that FTA should maintain a central list that includes the designated planning entity in each community, contact information, and sample coordinated plans. A second commenter suggested that FTA regional offices collect coordinated plans and have a procedure for obtaining a copy. A third suggested that FTA facilitate information sharing across regions on plan development and implementation. A fourth commenter suggested that technical assistance from FTA could assist regions in managing expectations of what the coordinated plans can be expected to achieve. In response, FTA is funding several technical assistance centers to assist States and local communities during the development and implementation of coordinated public transit-human service transportation plans. The Federal Interagency Coordinating Council on Access and Mobility (CCAM) has posted State Coordination Plans on the United We Ride Web site (*www.unitedweride.gov*) which will also be linked to FTA's public Web site.

Some commenters asserted that other key Federal agencies need to be mandated to participate in the process, and that true coordination, without the involvement of those agencies, has little hope of substantive success. One commenter suggested that FTA actively seek opportunities to include similar coordination requirements in the authorizing legislation for all Federal programs receiving Federal dollars to provide transportation to their clients.

As stated in our March 15, 2006, and our September 6, 2006, **Federal Register** notices, FTA is committed to working with our Federal partners through the United We Ride initiative and CCAM to encourage agencies that receive Federal funding to participate in the coordinated planning process. In the 2005 Report to the President, CCAM outlined five recommendations for future action related to coordinated human services transportation. These recommendations include two policy statements adopted by CCAM members in late 2006 related to coordinated planning and vehicle sharing. We have included summaries of the policy statements in Chapter III of each circular, and Web links to the full policy statements. CCAM will work with each member Department to implement the policy statements that build participation in coordinated human service transportation services at the local level. In addition to these efforts, FTA encourages State DOT offices to work closely with their partner agencies and local governmental officials to educate policy makers about the importance of partnering with human service transportation programs and the opportunities that are available when building a coordinated system.

One commenter suggested that each plan should include a description of the planning process, specifically outlining how the planning entity involved the disability community in developing the plan. The commenter felt that including this description in the plan would be a safeguard to ensure that all interested stakeholders had an opportunity to be involved. Another commenter wondered why documentation of efforts, the process for adopting the plan, and human service needs related to intercity transportation are included

in the body of the circulars but not as required elements.

In an effort to streamline, we have identified what we believe are the key elements in the plan. A description of the planning process, documenting efforts, and adopting the plan are not elements. Further, whether available intercity transportation is meeting the needs of the community or not is part of identifying the needs, which is one of the required elements. Designated recipients must certify annually that projects selected were derived from a coordinated plan, and the plan must be developed through a process that includes members of the public, which includes persons with disabilities. FTA's oversight of these programs will include review of the outreach efforts engaged in by the designated recipient, as well as the list of participants, to ensure that interested parties are invited to participate.

One commenter asked if a State could unilaterally update a plan developed by a locally chosen lead agency. A second asserted that the MPO, as well as the designated recipient, should have a role in the planning process. A State should not be unilaterally updating a local coordinated plan—the planning team that developed the plan should do the updating as necessary. The circulars and the planning regulations encourage a collaborative process for developing the coordinated plan that includes key players such as the MPO and the designated recipient. As we stated in both previous **Federal Register** notices, the ''public transit'' in ''locally developed coordinated public transit-human service transportation plan'' is the local transit agency, which is often, but not always, the designated recipient, and that entity is expected to participate in the coordinated planning process. When everyone is at the planning table—the MPO; the designated recipient(s); passengers who are elderly, low income, or have disabilities; and other interested stakeholders—the opportunity for producing a truly coordinated plan that works for the whole community is realized.

FTA received several comments on the relationship between the coordinated planning process and other transportation planning processes. As stated previously, in response to comments, we have added an ''Appendix E'' to the Section 5310 circular and an ''Appendix G'' to the JARC and New Freedom circulars describing in more detail the relationship between the coordinated planning process and other transportation planning processes. Some commenters asserted that small JARC or New Freedom projects may not rise to the level of ''regionally significant'' and therefore should be included in the STIP at the program level, rather than at the project level. FTA agrees, and stated that in the proposed circulars. We have retained that language in the final circulars, and therefore retained the language that projects should be ''included in'' the STIP, and not merely ''consistent with'' the STIP.

F. Chapter VI—Program Management and Administrative Requirements

Chapter VI provides more details for States and direct recipients on how to manage the administrative aspects of the three grant programs, and is similar for all three programs. FTA notes that Chapter VI in the final circulars is largely a reorganization of the Program Management chapter in the 1998 Section 5310 Circular 9070.1E (Chapter V). The chapter starts by noting that the basic grant management requirements for State and local governments are contained in DOT regulations, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' 49 CFR part 18, and ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' 49 CFR part 19, which are collectively referred to as the ''common grant rule.'' Chapter VI provides summary information about certain aspects of the common grant rule, and how management of those aspects may be applied to these three programs. Chapter VI also notes that more detailed information about general program and grant management is found in FTA Circular 5010.1C, ''Grant Management Guidelines.''

The common grant rule allows States to use slightly different standards for the establishment of equipment management, procurement, and financial management systems than are required for other FTA recipients. Therefore, throughout Chapter VI, distinctions are made between the requirements for States and other designated recipients. In addition, the Section 5310 circular has a section on leasing vehicles that is specific to that program. The only change made to the final circulars was in the section on ''Reporting Requirements'' regarding program performance measures.

FTA received a number of comments on our proposed performance measures; some in support, and others against. In response to comments, we have modified the reporting measures somewhat, placed them in Chapter II as well as Chapter VI, and clarified that the indicators specified are targeted to capture program information on a National level—these measures will not be used to assess individual grants. Each program has different performance measures.

Two commenters noted that the circulars require States to submit annual reports, but urbanized areas must submit quarterly reports, and they questioned why there is a difference. This reporting requirement is consistent with FTA's reporting requirements for Section 5307 and 5309 grants.

One commenter suggested adding a provision to the Section 5310 circular that would require vehicles purchased with Section 5310 funds to be available in disasters and emergency situations, especially lift-equipped vehicles. FTA declines to add this provision to the final circular. Each community and/or State develops its own emergency plans, and should certainly have an inventory of available vehicles that includes those vehicles purchased with Section 5310 funds. In many cases, the non-profit agencies that own those vehicles use them to evacuate their consumers in cases of emergency. When necessary, however, those vehicles should be a part of a communities' emergency evacuation plan.

One commenter, in responding to paragraph 5(c) regarding transfers of equipment to another subrecipient when the property is no longer needed for the original grant purpose, and showing the transfer in an active POP, asserted that adding transferred property to a current POP is problematic if the grant under which the property was purchased has been closed. FTA does not view this as a problem. Recording the transferred equipment in an active grant is sufficient to indicate that the entity responsible for use of the vehicle has changed. The original grant does not have to be modified.

G. Chapter VII—State and Program Management Plans

FTA requires States and designated recipients responsible for implementing the Section 5310, JARC, and New Freedom (and Section 5311) programs to document their approach to managing the programs. Chapter VII includes guidance on how to create and use State Management Plans (SMP) (for the State-managed aspects of the programs), and Program Management Plans (PMP) (for designated recipient-managed aspects of the programs). The primary purposes of Management Plans are to serve as the basis for FTA management reviews of the program, and to provide public information on the administration of the programs. Chapter VII in the final

circulars is largely a restatement of the SMP chapter in the 1998 Section 5310 Circular 9070.1E (Chapter VII). FTA did not make any changes to the proposed Chapter VII; we have adopted the proposed Chapter VII as the final Chapter VII.

In all three program circulars, the first two parts of Chapter VII explain the general requirements and purpose of Management Plans. The third part, ''Reviews,'' differs slightly among the programs. The Section 5310 circular discusses only State Management Reviews (as it is an entirely State-managed program), while the JARC and New Freedom circulars discuss reviews at both the State and designated recipient level. The ''Reviews'' part of Chapter VII is an addition to the 1998 Section 5310 circular.

The fourth part of Chapter VII discusses the content of Management Plans. The suggested content of SMPs and PMPs is essentially identical in all three circulars, but the Section 5310 circular reflects the fact that Section 5310 is entirely State administered. Management Plans are to include a section on use of the 10 percent of the apportionment available for administration and technical assistance, and a description of how the State or designated recipient makes additional resources available to local areas.

The final part of Chapter VII, which discusses revisions to the Management Plan, is the same for all three circulars, and mirrors the language in the 1998 Section 5310 circular.

One commenter requested that FTA make the information in the SMP and PMP more available to the public. Members of the public can obtain this information from the FTA regional office that serves the designated recipient or State. In addition, some grantees make this information available on their Web sites.

H. Chapter VIII—Other Provisions

This chapter is an expansion of the current ''Other Provisions'' chapter in the 1998 Section 5310 circular, and is virtually the same for all three circulars. Chapter VIII summarizes a number of FTA-specific and other Federal requirements that FTA grantees are held to in addition to the program-specific requirements and guidance provided in these circulars. This chapter explains some of the most relevant requirements and provides citations to the actual statutory or regulatory text. Grantees should use this document in conjunction with FTA's ''Master Agreement'' and the current fiscal year ''Certifications and Assurances'' to assure that they have met all requirements. Grantees may contact FTA Regional Counsel for more details about these requirements.

In paragraph 10(b) of the proposed JARC circular, describing transit employee protection under 49 U.S.C. 5333(b), FTA stated that we anticipate the Department of Labor (DOL) will revise the warranty and procedures currently in use relative to Section 5311. One commenter wanted to know, until such action is taken by DOL, what provisions are being made to allow the Section 5311 process to be applied to rural grantees of the JARC program. We have removed this language from the JARC circular, and will amend the circular when/if DOL changes its procedures. Until DOL changes its procedures, the Section 5311 warranty will not apply to rural JARC projects, and FTA must transmit JARC grants to DOL for certification. JARC projects should not be combined in a single grant with Section 5311 funds.

Paragraph 14 discusses the Drug and Alcohol testing requirements for Section 5310, JARC, and New Freedom. Recipients that only receive Section 5310, JARC, or New Freedom funds are not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration's rule for employees who hold Commercial Driver's Licenses. Recipients of other FTA programs that also receive Section 5310, JARC, or New Freedom funds should include any employees funded under these programs in their testing program. One commenter asserted that FTA rules do not allow employees not covered by FTA's drug and alcohol rules to be tested under FTA rules, and therefore they would have to have two testing programs. An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5311), can be used for Section 5310, JARC, and New Freedom employees; there is no need to have two testing programs. Employees of a subrecipient of Section 5310, JARC, or New Freedom funds from a designated recipient of another FTA program (such as 5307 or 5311) should also be included in the designated recipient's testing program.

I. Appendices

The Appendices sections for the Section 5310, JARC, and New Freedom programs are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. Appendix A also includes an application checklist and information for registering with the Electronic Clearinghouse Operation System (ECHO). One commenter questioned why both an Allocation Letter and a Program of Projects (POP) needed to be submitted at the same time, since the POP is included with the grant application and includes the same information as the Allocation Letter. We have revised the language in paragraph 1(f) of Appendix A to state that the Allocation Letter is only necessary if the State is allowing a public entity in a small urbanized area under 200,000 in population to apply for funds directly from FTA.

Appendix B includes a sample program of projects. Appendix C in the 5310 circular and Appendix E in the JARC and New Freedom circulars provides contact information for FTA's regional offices. In the JARC and New Freedom circulars, Appendix C includes budget information and provides specific activity line item (ALI) codes for specific types of eligible costs (i.e., capital, operating, planning, etc.). A sample approved budget is included in Appendix D. Appendix C in the Section 5310 circular and Appendix E in the JARC and New Freedom circulars contain contact information for FTA's regional and metropolitan offices. Appendix D in Section 5310 and Appendix F in the JARC and New Freedom circulars list potential sources of technical assistance. In the final circulars, we added Appendix E in the Section 5310 circular and Appendix G in the JARC and New Freedom circulars, ''Relationship Between Coordinated Planning and Metropolitan and Statewide Planning.'' The final Appendix in each circular is a list of References, traditionally at the front of FTA circulars. FTA has moved this list to an appendix for ease of reading.

Issued in Washington, DC, this 22nd day of March 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–5734 Filed 3–28–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 672X)]

CSX Transportation, Inc.—Abandonment Exemption—in Manatee County, FL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.66-mile

line of railroad on its Southern Region, Jacksonville Division, Palmetto Subdivision, from milepost SWC 871.0 to the end of track at milepost 871.66, known as the west end of the Parrish Spur, City of Palmetto, in Manatee County, FL. The line traverses United States Postal Service Zip Code 34221.

CSXT has certified that: (1) No traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 28, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 9, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Steven C. Armbrust, Esq., CSX Transportation, Inc., 500 Water St., Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 3, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by March 29, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: March 20, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–5472 Filed 3–28–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2007

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2007 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

SUMMARY: The 2007 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2007 inflation adjustment factors and reference prices apply to calendar year 2007 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2007 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2007 for qualified energy resources and refined coal is 1.3433. The inflation adjustment factor for Indian coal is 1.0293.

Reference Prices: The reference price for calendar year 2007 for facilities producing electricity from wind is 3.29 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $48.35 per ton for calendar year 2007. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production have not been determined for calendar year 2007. The IRS is exploring methods of determining those reference prices for calendar year 2008.

Because the 2007 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2007. Because the 2007 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2007. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2007.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2007 under section 45(a) is 2.0 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.0 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2007 under section 45(e)(8)(A) is $5.877 per ton on the sale of qualified refined coal. The credit for Indian coal production for calendar year 2007 under section 45(e)(10)(B) is $1.544 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3040 (not a toll-free call).

William P. O'Shea,

Associate Chief Counsel (Passthroughs & Special Industries).

[FR Doc. E7–5733 Filed 3–28–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on CARES Business Plan Studies has scheduled a meeting on April 17, 2007, at Montrose VA Medical Center, Building 15, Room 7, 2094 Albany Post Road, Montrose, New York. The meeting will convene at 4 p.m. and conclude at 7 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset Realignment for Enhanced Services (CARES) Decision document.

The objective of the meeting is for the CARES contractor to present the business plan options, for the VA Montrose and Castle Point campuses, recommended to VA for further study and those selected by VA. The Committee will provide recommendations to the contractor regarding issues to be addressed in the Stage 2 study of the options selected by VA. The agenda will accommodate public commentary on the issues to be addressed in Stage 2 of the CARES study.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, please contact Mr. Jay Halpern, Designated Federal Officer, (00CARES), at 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–5994, or by e-mail at *jay.halpern@hq.med.va.gov.*

Dated: March 22, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–1529 Filed 3–28–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 60

Thursday, March 29, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Multiple Pass Faraday Rotation Amplifier

Correction

In notice document 07–1276 appearing on page 12597 in the issue of Friday, March 16, 2007, make the following correction:

On page 12597, in the third column, in the third line, ''*susan.mcrae@army.mil*'' should read ''*susan.mcrae@smdc.army.mil*''.

[FR Doc. C7–1276 Filed 3–28–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Fort Bliss, Texas and New Mexico, Mission Master Plan Final Supplemental Programmatic Environmental Impact Statement

Correction

In notice document 07–1432 appearing on page 13751 in the issue of Friday, March 23, 2007, make the following corrections:

1. On page 13751, in the first column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the third line from the bottom of the paragraph, ''analyses'' should read ''analyzes''.

2. On the same page, in the second column, in the third paragraph, in the fifth line from the bottom of the paragraph, ''ore'' should read ''more''.

3. On the same page, in the same column, in the fifth paragraph, in the fifth line from the bottom of the paragraph, ''299 McFie'' should read ''2999 McFie''.

[FR Doc. C7–1432 Filed 3–28–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD; Amendment 39–14982; AD 2007–06–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

Correction

In rule document 07–1106 beginning on page 10909 in the issue of Monday, March 12, 2007, make the following correction:

§ 39.13 [Corrected]

On page 10912, in the first column, in § 39.13(e)(2), in the first column of the table, in the last line of the column, ''AD–24–01'' should read ''AD 62–24–01''.

[FR Doc. C7–1106 Filed 3–28–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 29, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Grizzly Bears; Yellowstone Distinct Population; Notice of Petition Finding; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT38

Endangered and Threatened Wildlife and Plants; Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List as Endangered the Yellowstone Distinct Population Segment of Grizzly Bears

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we or us), hereby establish a distinct population segment (DPS) of the grizzly bear (*Ursus arctos horribilis*) for the Greater Yellowstone Area (GYA) and surrounding area (hereafter referred to as the Yellowstone DPS, Yellowstone grizzly bear DPS, or Yellowstone grizzly bear population) and remove this DPS from the List of Threatened and Endangered Wildlife. The Yellowstone grizzly bear population is no longer an endangered or threatened population pursuant to the Endangered Species Act of 1973, as amended (Endangered Species Act or the Act) (16 U.S.C. 1531 *et seq.*), based on the best scientific and commercial data available. Robust population growth, coupled with State and Federal cooperation to manage mortality and habitat, widespread public support for grizzly bear recovery, and the development of adequate regulatory mechanisms has brought the Yellowstone grizzly bear population to the point where making a change to its status is appropriate.

The delisting of the Yellowstone DPS does not change the threatened status of the remaining grizzly bears in the lower 48 States, which remain protected by the Act. In an upcoming but separate notice, we will initiate a 5-year status review of the grizzly bear as listed under the Act based on additional scientific information that is currently being collected and analyzed. Finally, we announce a 90-day finding on a petition (submitted during the public comment period for the proposed rule) to list the Yellowstone grizzly bear population as endangered on the Federal List of Threatened and Endangered Wildlife under the Act and to designate critical habitat. We find that the petition and additional information in our files did not present substantial scientific information indicating that listing the Yellowstone grizzly bear population as endangered may be warranted. Therefore, we are not initiating a status review in response to this petition.

DATES: This rule becomes effective April 30, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for inspection, by appointment, during normal business hours, at our Missoula office, Grizzly Bear Recovery Coordinator, University Hall, Room #309, University of Montana, Missoula, Montana 59812. Call (406) 243–4903 to make arrangements. In addition, certain documents such as the Strategy and information appended to the recovery plan are available at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, at our Missoula office (see **ADDRESSES** above) or telephone (406) 243–4903. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Prior to publication of this final rule, we—(1) Finalized the Conservation Strategy (Strategy) that will guide post-delisting monitoring and management of the grizzly bear in the GYA; (2) appended the habitat-based recovery criteria to the 1993 Recovery Plan and the Strategy; and (3) appended an updated and improved methodology for calculating total population size, known to unknown mortality ratios, and sustainable mortality limits for the Yellowstone grizzly bear population to the 1993 Recovery Plan and the Strategy. Additionally, the U.S. Department of Agriculture (USDA) Forest Service finalized the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests and made a decision to incorporate this Amendment into the affected National Forests' Land Management Plans. Yellowstone and Grand Teton National Parks also appended the habitat standards described in the Strategy to their Park Superintendent's Compendiums, thereby assuring that these National Parks will manage habitat in accordance with those habitat standards.

Species Description

Grizzly bears are generally larger and more heavily built than other bears (Craighead and Mitchell 1982, p. 517; Schwartz et al. 2003b, p. 558). Grizzly bears can be distinguished from black bears, which also occur in the lower 48 States, by longer, curved claws, humped shoulders, and a face that appears to be concave (Craighead and Mitchell 1982, p. 517). A wide range of coloration from light brown to nearly black is common (LeFranc et al. 1987, pp. 17–18). Spring shedding, new growth, nutrition, and coat condition all affect coloration. Guard hairs (long, course outer hair forming a protective layer over the soft underfur) are often pale in color at the tips; hence the name ''grizzly'' (Craighead and Mitchell 1982, p. 517). In the lower 48 States, the average weight of grizzly bears is generally 200 to 300 kilograms (kg) (400 to 600 pounds (lb)) for males and 110 to 160 kg (250 to 350 lb) for females (Craighead and Mitchell 1982, pp. 518–520). Grizzly bears are long-lived mammals, generally living to be around 25 years old (LeFranc et al. 1987, pp. 47, 51).

Taxonomy

Grizzly bears (*Ursus arctos horribilis*) are vertebrates that belong to the Class Mammalia, Order Carnivora, and Family Ursidae. The grizzly bear is a member of the brown bear species (*U. arctos*) that occurs in North America, Europe, and Asia; the subspecies *U. a. horribilis* is limited to North America (Rausch 1963, p. 43; Servheen 1999, pp. 50–53). Early taxonomic descriptions of *U. arctos* based primarily on skull measurements described more than 90 subspecies (Merriam 1918, pp. 9–16), but this was later revised to 2 subspecies in North America (*U. a. middendorfi* on the islands of the Kodiak archipelago in Alaska and *U. a. horribilis* in the rest of North America) (Rausch 1963, p. 43). The two North American subspecies approach of Rausch (1963, p. 43) is generally accepted by most taxonomists today, and is the approach we use. Additional discussion of this issue can be found in the proposed rule (70 FR 69854–69855, November 17, 2005). The original 1975 listing (40 FR 31734–31736, July 28, 1975) had been inadvertently modified in the List of Endangered and Threatened Wildlife to *U. arctos* with a historic holarctic range. With this final rule, we have corrected this error to reflect the original listed entity of *U. arctos horribilis* with a historic range of North America.

Behavior

Although adult bears are normally solitary (Nowak and Paradiso 1983, p. 971), home ranges of adult bears frequently overlap (Schwartz *et al.* 2003b, pp. 565–566). Grizzly bears display a behavior called natal philopatry in which dispersing young establish home ranges within or overlapping their mother's (Waser and Jones 1983, p. 361; Schwartz *et al.* 2003b, p. 566). This type of movement makes dispersal across landscapes a slow process. Radio-telemetry and genetics data suggests females establish home ranges an average of 9.8 to 14.3 kilometers (km) (6.1 to 8.9 miles (mi)) away from the center of their mother's home range, whereas males generally stray further, establishing home ranges roughly 29.9 to 42.0 km (18.6 to 26.0 mi) away from their mother's (McLellan and Hovey 2001, p. 842; Proctor *et al.* 2004, p. 1108).

The home range of adult male grizzly bears is typically three to five times the size of an adult female's home range (LeFranc *et al.* 1987, pp. 27–30). The large home ranges of grizzly bears, particularly males, enhance genetic diversity in the population by enabling males to mate with numerous females (Blanchard and Knight 1991, pp. 46–51; Craighead *et al.* 1995, pp. 303–305). Grizzly bear population densities of one bear per 20 square kilometers (sq km) (8 square miles (sq mi)) have been reported in Glacier National Park (Martinka 1976, p. 150), but most populations in the Lower 48 States are much less dense (LeFranc *et al.* 1987, pp. 47, 52–53). For example, estimates of grizzly bear densities in the GYA range from one bear per 50 sq km (20 sq mi) to one bear per 80 sq km (30 sq mi) (Blanchard and Knight 1980, pp. 263–264; Craighead and Mitchell 1982, pp. 537–538).

Grizzly bears have a promiscuous mating system (Hornocker 1962, p. 70; Craighead and Mitchell 1982, p. 522; Schwartz *et al.* 2003b, p. 563) with genetic studies confirming that cubs from the same litter can have different fathers (Craighead *et al.* 1998, p. 325). Mating occurs from May through July with a peak in mid-June (Craighead and Mitchell 1982, p. 522; Nowak and Paradiso 1983, p. 971). Age of first reproduction and litter size may be related to nutritional state (Stringham 1990, p. 433; McLellan 1994, p. 20; Hilderbrand *et al.* 1999, pp. 135–136; Mattson 2000, p. 110). Age of first reproduction varies from 3 to 8 years of age, and litter size varies from one to four cubs (Schwartz *et al.* 2003b, p. 563). For the Yellowstone grizzly bear population, the average age of first reproduction is approximately 6 years old, and the average litter size is 2.04 cubs (Schwartz *et al.* 2006a, p. 19). Cubs are born in a den in late January or early February and remain with the female for 2 to 3 years before the mother will again mate and produce another litter (Schwartz *et al.* 2003b, p. 564). Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the late age of first reproduction, small average litter size, and the long interval between litters (Nowak and Paradiso 1983, p. 971; Schwartz *et al.* 2003b, p. 564). Given the above factors and natural mortality, it may take a single female 10 years to replace herself in a population (U.S. Fish and Wildlife Service 1993, p. 4). Grizzly bear females cease breeding successfully some time in their mid-to-late 20s (Schwartz *et al.* 2003a, pp. 109–110).

For 3 to 6 months during winter, grizzly bears across their range enter dens in an adaptive behavior which increases survival during periods of low food availability, deep snow, and low air temperature (Craighead and Craighead 1972, pp. 33–34). Grizzly bears in the lower 48 States spend between 4 and 6 months in dens beginning in October or November (Linnell *et al.* 2000, p. 401). During this period, they do not eat, drink, urinate, or defecate (Folk *et al.* 1976, pp. 376–377; Nelson 1980, p. 2955). Hibernating grizzly bears exhibit a marked decline in heart and respiration rate, but only a slight drop in body temperature (Nowak and Paradiso 1983, p. 971). Due to their relatively constant body temperature in the den, hibernating grizzly bears can be easily aroused and have been known to exit dens when disturbed by seismic or mining activity (Harding and Nagy 1980, p. 278) or by human activity (Swenson *et al.* 1997a, p. 37). Both males and females have a tendency to use the same general area year after year, but the same exact den is rarely used twice by an individual (Schoen *et al.* 1987, p. 300; Linnell *et al.* 2000, p. 403). Females display stronger area fidelity than males and generally stay in their dens longer, depending on reproductive status (Judd *et al.* 1986, pp. 113–114; Schoen *et al.* 1987, p. 300; Linnell *et al.* 2000, p. 403).

In preparation for hibernation, bears increase their food intake dramatically during a stage called hyperphagia (Craighead and Mitchell 1982, p. 544). Hyperphagia is defined simply as overeating (in excess of daily metabolic demands) and occurs throughout the 2 to 4 months prior to den entry. During hyperphagia, excess food is deposited as fat, and grizzly bears may gain as much as 1.65 kg/day (3.64 lb/day) (Craighead and Mitchell 1982, p. 544). Grizzly bears must consume foods rich in protein and carbohydrates in order to build up fat reserves to survive denning and post-denning periods (Rode and Robbins 2000, pp. 1643–1644). These layers of fat are crucial to the hibernating bear as they provide a source of energy and insulate the bear from cold temperatures, and are equally important in providing energy to the bear upon emergence from the den when food is still sparse relative to metabolic requirements (Craighead and Mitchell 1982, p. 544).

Although the digestive system of bears is essentially that of a carnivore, bears are successful omnivores, and in some areas may be almost entirely herbivorous (Jacoby *et al.* 1999, pp. 924–926; Schwartz *et al.* 2003b, pp. 568–569). Grizzly bears are opportunistic feeders and will consume almost any available food including living or dead mammals or fish, and, sometimes, garbage (Knight *et al.* 1988, p. 121; Mattson *et al.* 1991a, pp. 1620–1624; Schwartz *et al.* 2003b, pp. 568–569). In areas where animal matter is less available, grasses, roots, bulbs, tubers, and fungi may be important in meeting protein requirements (LeFranc *et al.* 1987, pp. 111–114). High-quality foods such as berries, nuts, insects, and fish are important in some areas (Schwartz *et al.* 2003b, pp. 568–569).

The search for food has a prime influence on grizzly bear movements (Mattson *et al.* 1991a, pp. 1625–1626). In the GYA, four food sources have been identified as important to grizzly bear survival and reproductive success (Mattson *et al.* 2002, p. 2). Winter-killed ungulates serve as an important food source in early spring before most vegetation is available (Green *et al.* 1997, p. 140; Mattson 1997, p. 165). During early summer, spawning cutthroat trout (*Oncorhynchus clarki*) are a source of nutrition for grizzly bears in the Yellowstone population (Mattson *et al.* 1991a, p. 1623; Mattson and Reinhart 1995, p. 2072; Felicetti *et al.* 2004, pp. 496, 499). Grizzly bears feed on army cutworm moths (*Euxoa auxiliaris*) during late summer and early fall as they try to acquire sufficient fat levels for winter (Mattson *et al.* 1991b, p. 2432; French *et al.* 1994, p. 394). Lastly, in some years, whitebark pine (*Pinus albicaulis*) seeds serve as an important fall food due to their high fat content and abundance as a pre-hibernation food (Mattson and Reinhart 1994, p. 212). The distribution and abundance of these grizzly bear foods vary naturally among seasons and years.

On average, approximately 79 percent of the diet of adult male and 45 percent of the diet of adult female grizzly bears in the GYA is terrestrial meat (Jacoby *et al.* 1999, p. 925). In contrast, in Glacier National Park, over 95 percent of the diets of both adult male and female grizzly bears are vegetation (Jacoby *et al.* 1999, p. 925). Ungulates rank as the second highest source of net digestible energy available to grizzly bears in the GYA (Mealey 1975, pp. 84–86; Pritchard and Robbins 1990, p. 1647; Craighead *et al.* 1995, pp. 250–251). Grizzly bears with home ranges in areas with few plant foods depend extensively on ungulate meat (Harting 1985, pp. 69–70, 85–87). Grizzly bears in the GYA feed on ungulates primarily as winter-killed carrion from March through May although they also depredate elk calves for a short period in early June (Gunther and Renkin 1990, pp. 330–332; Green *et al.* 1997, p. 1040; Mattson 1997, pp. 165–166). Carcass availability fluctuates with winter severity because fewer ungulates die during mild winters (Mattson *et al.* 1991a, pp. 1622–1623).

Due to their high digestibility and protein and lipid content, spawning cutthroat trout are one of the highest sources of digestible energy available to bears during early summer in Yellowstone National Park (Mealey 1975, pp. 84–86; Pritchard and Robbins 1990, p. 1647). Grizzly bears are known to prey on cutthroat trout in at least 36 different streams tributary to Yellowstone Lake (Reinhart and Mattson 1990, pp. 345–346). From 1997 to 1999, Haroldson *et al.* (2000, pp. 32–35) identified 85 different grizzly bears that had likely fished spawning stream tributaries to Yellowstone Lake. While importance varies by season and year, few bears develop a dependence on this food source (Haroldson *et al.* 2005, pp. 173–174). Only 23 individuals visited spawning streams more than 1 year out of the 4 years sampled, suggesting that this resource is used opportunistically (Haroldson *et al.* 2005, pp. 174–175). In contrast to earlier studies which used different assumptions and methods (Reinhart and Mattson 1990, pp. 345–349; Mattson and Reinhart 1995, pp. 2078–2079), Felicetti *et al.* (2004, pp. 496–499) found that male grizzly bears are the primary consumers of cutthroat trout, accounting for 92 percent of all trout consumed by Yellowstone grizzly bears.

Alpine moth aggregations are an important food source for a considerable portion of the Yellowstone grizzly bear population (Mattson *et al.* 1991b, p. 2434). As many as 35 different grizzly bears with cubs-of-the-year have been observed feeding at moth sites in a single season (Ternent and Haroldson 2000, p. 39). Some bears may feed almost exclusively on moths for a period of over a month (French *et al.* 1994, p. 393). Moths have the highest caloric content per gram of any other bear food (French *et al.* 1994, p. 391). Moths are available during late summer and early fall when bears consume large quantities of foods in order to acquire sufficient fat levels for winter (Mattson *et al.* 1991b, p. 2433). A grizzly bear feeding extensively on moths over a 30-day period may consume up to 47 percent of its annual energy budget of 960,000 calories (White *et al.* 1999, pp. 149–150). Moths also are valuable to bears because they are located in remote areas, thereby reducing the potential for grizzly bear/human conflicts during the late-summer tourist months (Gunther *et al.* 2004, p. 15).

Due to their high fat content and potential abundance as a pre-hibernation food, whitebark pine seeds are an important fall food for bears in the GYA (Mattson and Jonkel 1990, p. 223; Mattson *et al.* 1991a, p. 1623). Yellowstone grizzly bears consume whitebark pine seeds extensively when whitebark cones are available. Bears may feed predominantly on whitebark pine seeds when production exceeds 20 cones per tree (Blanchard 1990, p. 362; Mattson *et al.* 1992, pp. 433, 436). During years of low whitebark pine seed availability, grizzly bears often seek alternate foods at lower elevations in association with human activities (Mattson *et al.* 1992, p. 436; Knight and Blanchard 1995, p. 23; Gunther *et al.* 1997, pp. 9–11; Gunther *et al.* 2004, p. 18).

The production and availability of these four major foods can have a positive effect on reproduction and survival rates of Yellowstone grizzly bears (Mattson *et al.* 2002, p. 5). For example, during years when whitebark pine seeds are abundant, there are fewer grizzly bear/human conflicts in the GYA (Mattson *et al.* 1992, p. 436; Gunther *et al.* 2004, pp. 13–15). Grizzly bear/human conflicts are incidents in which bears kill or injure people, damage property, kill or injure livestock, damage beehives, obtain anthropogenic (man-made) foods, or damage or obtain garden and orchard fruits and vegetables (USDA Forest Service1986, pp. 53–54). During poor whitebark pine years, grizzly bear/human conflicts are more frequent, resulting in higher numbers of human-caused grizzly bear mortalities due to defense of life or property and management removals of nuisance bears (Mattson *et al.* 1992, p. 436; Gunther *et al.* 2004, pp. 13–14). A nuisance bear is one that seeks human food in human-use areas, kills lawfully present livestock, or displays unnatural aggressive behavior toward people (USDA Forest Service 1986, pp. 53–54). Introduced organisms (e.g., white pine blister rust and lake trout), habitat loss, and other human activities can negatively impact the quantity and distribution of these four primary foods (Reinhart *et al.* 2001, pp. 285–286). Potential effects to food supply and human/bear conflict are discussed in more detail in the 5-factor analysis.

Recovery

Prior to the arrival of Europeans, the grizzly bear occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska (Roosevelt 1907, pp. 27–28; Wright 1909, pp. vii, 3, 185–186; Merriam 1922, p. 1; Storer and Tevis 1955, p. 18; Rausch 1963, p. 35; Herrero 1972, pp. 224–227; Mattson *et al.* 1995, p. 103; Schwartz *et al.* 2003b, pp. 557–558). Pre-settlement population levels for the western contiguous United States are believed to be in the range of 50,000 animals (Servheen 1999, p. 50). With European settlement of the American West, grizzly bears were shot, poisoned, and trapped wherever they were found, and the resulting range and population declines were dramatic (Roosevelt 1907, pp. 27–28; Wright 1909, p. vii; Storer and Tevis 1955, pp. 26–27; Leopold 1967, p. 30; Koford 1969, p. 95; Craighead and Mitchell 1982, p. 516; Mattson *et al.* 1995, p. 103). The range and numbers of grizzlies were reduced to less than 2 percent of their former range and numbers by the 1930s, approximately 125 years after first contact (U.S. Fish and Wildlife Service 1993, p. 9; Mattson *et al.* 1995, p. 103; Servheen 1999, p. 51). Of 37 grizzly populations present in 1922, 31 were extirpated by 1975 (Servheen 1999, p. 51).

By the 1950s, with little or no conservation effort or management directed at maintaining grizzly bears anywhere in their range, the GYA population had been reduced in numbers and was restricted largely to the confines of Yellowstone National Park and some surrounding areas (Craighead *et al.* 1995, pp. 41–42; Schwartz *et al.* 2003b, pp. 575–579). High grizzly bear mortality in 1970 and 1971, following closure of the open-pit dumps in Yellowstone National Park (Gunther 1994, p. 550; Craighead *et al.* 1995, pp. 34–36), and concern about grizzly population status throughout its remaining range prompted the 1975 listing of the grizzly bear as a threatened species in the lower 48 States under the Act (16 U.S.C. 1531 *et seq.*) (40 FR

31734–31736, July 28, 1975). When the grizzly bear was listed in 1975, the population estimate in the GYA ranged from 136 to 312 individuals (Cowan *et al.* 1974, pp. 32, 36; Craighead *et al.* 1974, p. 16; McCullough 1981, p. 175).

In 1981, we hired a grizzly bear recovery coordinator to direct recovery efforts and to coordinate all agency efforts on research and management of grizzly bears in the lower 48 States. In 1982, the first Grizzly Bear Recovery Plan (Recovery Plan) was completed (U.S. Fish and Wildlife Service 1982, p. ii). The Recovery Plan identified five ecosystems within the conterminous United States thought to support grizzly bears. Today, grizzly bear distribution is primarily within, but not limited to, the areas identified as Recovery Zones (U.S. Fish and Wildlife Service 1993, pp. 10–13, 17–18), including—the GYA in northwest Wyoming, eastern Idaho, and southwest Montana (24,000 sq km (9,200 sq mi)) at more than 500 bears (Interagency Grizzly Bear Study Team 2006, p. 15); the Northern Continental Divide Ecosystem (NCDE) of north central Montana (25,000 sq km (9,600 sq mi)) at more than 500 bears (Kendall 2006); the North Cascades area of north central Washington (25,000 sq km (9,500 sq mi)) at less than 20 bears (Almack *et al.* 1993, p. 4); the Selkirk Mountains area of north Idaho, northeast Washington, and southeast British Columbia (5,700 sq km (2,200 sq mi)) at approximately 40 to 50 bears (64 FR 26730, May 17, 1999; 70 FR 24870, May 11, 2005); and the Cabinet-Yaak area of northwest Montana and northern Idaho (6,700 sq km (2,600 sq mi)) at approximately 30 to 40 bears (Kasworm and Manley 1988, p. 21; Kasworm *et al.* 2004, p. 2). There is an additional Recovery Zone known as the Bitterroot Recovery Zone in the Bitterroot Mountains of east-central Idaho and western Montana (14,500 sq km (5,600 sq mi)), but this area does not contain any grizzly bears at this time (U.S. Fish and Wildlife Service 1996, p. 1; 65 FR 69624, November 17, 2000; U.S. Fish and Wildlife Service 2000, p. ix). The San Juan Mountains of Colorado also were identified as an area of possible grizzly bear occurrence (40 FR 31734–31736, July 28, 1975; U.S. Fish and Wildlife Service 1982, p. 12; U.S. Fish and Wildlife Service 1993, p. 11), but no confirmed sightings of grizzly bears have been found in the San Juan Mountains since a bear was killed there in 1979 (U.S. Fish and Wildlife Service 1993, p. 11).

In the initial Recovery Plan, the Yellowstone Grizzly Bear Ecosystem, later called the Yellowstone Grizzly Bear Recovery Zone, was defined as an area large enough and of sufficient habitat quality to support a recovered grizzly bear population within which the population and habitat would be monitored (U.S. Fish and Wildlife Service 1982, pp. 55–58; U.S. Fish and Wildlife Service 1993, pp. 41). In 1993, we revised the Recovery Plan to include additional tasks and new information that increased the focus and effectiveness of recovery efforts (U.S. Fish and Wildlife Service 1993, pp. 41–58).

However, recovery plans are not regulatory documents and are instead intended to provide guidance to us, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, we may judge that the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the Recovery Plan was finalized. These opportunities may be used instead of methods identified in the Recovery Plan. Likewise, information on the species may be learned that was not known at the time the Recovery Plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management (defined as a 6-step feedback loop including assessment, design of management actions and associated monitoring and research, implementation of management according to the design, monitoring, evaluation of outcomes, and adjustment of management based on evaluation of initial management actions) that may, or may not, fully follow the guidance provided in a recovery plan. In the end, any determination of whether a species is no longer in need of the protections of the Act must be based on an assessment of the threats to the species.

Grizzly bear recovery has required cooperation among numerous Federal agencies, State agencies, non-government organizations, local governments, and citizens. In recognition that grizzly bear populations were unsustainably low, the Interagency Grizzly Bear Study Team (hereafter referred to as the Study Team) was created in 1973 to provide detailed scientific information for the management and recovery of the grizzly bear in the GYA. Current members of the Study Team include scientists from the Service, U.S. Geological Survey, USDA Forest Service, academia, and each State game and fish agency involved in grizzly bear recovery. The Study Team has developed protocols to monitor and manage grizzly bear populations and important habitat parameters.

In 1983, the Interagency Grizzly Bear Committee was created to coordinate management efforts and research actions across multiple Federal lands and States within the various Recovery Zones to recover the grizzly bear in the lower 48 States (USDA and U.S. Department of the Interior 1983). Its objective was to change land management practices to more effectively provide security and maintain or improve habitat conditions for the grizzly bear (USDA and U.S. Department of the Interior 1983). The Interagency Grizzly Bear Committee is made up of upper level managers from all affected State and Federal agencies (USDA and U.S. Department of the Interior 1983). Also in 1983, the Yellowstone Ecosystem Subcommittee, a subcommittee of the Interagency Grizzly Bear Committee, was formed to coordinate recovery efforts specific to the GYA (USDA and U.S. Department of the Interior 1983, p. 3). Members of the Yellowstone Ecosystem Subcommittee are mid-level managers and include—the Service; representatives from the six GYA National Forests (the Shoshone, Custer, Beaverhead-Deerlodge, Bridger-Teton, Gallatin, and Targhee); Yellowstone National Park; Grand Teton National Park; the Wyoming Game and Fish Department (WGFD); the Montana Department of Fish, Wildlife, and Parks (MTFWP); the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the Study Team; county governments from each affected State; the Northern Arapahoe Tribe; and the Eastern Shoshone Tribe (USDA and U.S. Department of the Interior 1983).

In 1994, The Fund for Animals, Inc., and 42 other organizations and individuals filed suit over the adequacy of the 1993 Recovery Plan (*Fund for Animals* v. *Babbitt*, 903 F. Supp. 96 (D. D.C. 1995); 967 F. Supp. 6 (D. D.C. 1997). In 1995, the U.S. District Court for the District of Columbia issued an order that remanded for further study and clarification four issues that are relevant to the GYA—(1) The method used to measure the status of bear populations; (2) the impacts of genetic isolation; (3) monitoring of the mortalities related to livestock; and (4)

the monitoring of disease (*Fund for Animals* v. *Babbitt,* 903 F. Supp. 96 (D. D.C. 1995); 967 F. Supp. 6 (D. D.C. 1997)). Following this court decision, all parties filed appeals. In 1997, the parties reached a settlement whereby we agreed to append habitat-based recovery criteria to the Recovery Plan (Settlement dated March 31, 1997, and approved by the court on May 5, 1997, *Fund for Animals* v. *Babbitt,* 967 F. Supp. 6 (D. D.C. 1997)) (hereafter *Fund for Animals* v. *Babbitt*). These four issues and the necessary supplement to the Recovery Plan as required by the court order and subsequent settlement are discussed in detail in this section and in the threats analysis.

Habitat Management and Development of Habitat-based Recovery Criteria—In 1979, the Study Team developed the first comprehensive Guidelines for Management Involving Grizzly Bears in the GYA (hereafter referred to as the Guidelines) (Mealey 1979, pp. 1–4). We determined in a biological opinion that implementation of the Guidelines by Federal land management agencies would promote conservation of the grizzly bear (U.S. Fish and Wildlife Service 1979, p. 1). Beginning in 1979, the six affected National Forests (Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer, Gallatin, and Shoshone), Yellowstone and Grand Teton National Parks, and the BLM in the GYA began managing habitats for grizzly bears under direction specified in the Guidelines.

In 1986, the Interagency Grizzly Bear Committee modified the Guidelines to more effectively manage habitat by mapping and managing according to three different management situations (USDA Forest Service 1986, pp. 35–39). In areas governed by ''Management Situation One,'' grizzly habitat maintenance and improvement and grizzly bear/human conflict minimization received the highest management priority. In areas governed by ''Management Situation Two,'' grizzly bear use was important, but not the primary use of the area. In areas governed by ''Management Situation Three,'' grizzly habitat maintenance and improvement were not management considerations.

Accordingly, the National Forests and National Parks delineated 18 different bear management units within the Recovery Zone to aid in managing habitat and monitoring population trends. Each bear management unit was further subdivided into subunits, resulting in a total of 40 subunits contained within the 18 bear management units (see map at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The bear management units are analysis areas that approximate the lifetime size of a female's home range, while subunits are analysis areas that approximate the annual home range size of adult females. Subunits provide the optimal scale for evaluation of seasonal feeding opportunities and landscape patterns of food availability for grizzly bears (Weaver *et al.* 1986, p. 236). The bear management units and subunits were identified to provide enough quality habitat and to ensure that grizzly bears were well distributed across the recovery zone as per the Recovery Plan (U.S. Fish and Wildlife Service 2007, pp. 20, 41, 44–46). Management improvements made as a result of these Guidelines are discussed under Factor A below.

Another tool employed to monitor habitat quality and assist in habitat management is the Yellowstone Grizzly Bear Cumulative Effects Model. The model was designed to assess the inherent productivity of grizzly bear habitat and the cumulative effects of human activities on bear use of that habitat (Weaver *et al.* 1986, p. 234; Dixon 1997, pp. 4–5; Mattson *et al.* 2002, p. 5). The model uses Geographic Information System (GIS) databases and relative value coefficients associated with human activities, vegetation, and key grizzly bear foods to calculate habitat value and habitat effectiveness (Weaver *et al.* 1986, p. 237; Mattson *et al.* 2002, p. 5). Habitat value is a relative measure of the average net digestible energy potentially available to bears in a subunit during each season. Habitat value is primarily a function of vegetation and major foods (Weaver *et al.* 1986, p. 236; Dixon 1997, pp. 62–64). Habitat effectiveness is that part of the energy potentially derived from the area that is available to bears given their response to humans (Weaver *et al.* 1986, pp. 238–239; Dixon 1997, pp. 4–5; Mattson *et al.* 2002, p. 5). More specifically, habitat effectiveness is a function of relative value coefficients of human activities, such as location, duration, and intensity of use for motorized access routes, non-motorized access routes, developed sites, and front- and back-country dispersed uses (Mattson *et al.* 2002, p. 5). The Cumulative Effects Model, which represents the best available scientific information in providing managers with a comparative index of how much habitat values have changed through time, is updated annually to reflect changes in vegetation, major foods, and the number and capacity of human activities.

As per the court settlement (*Fund for Animals* v. *Babbitt*) and as recommended by the 1993 Grizzly Bear Recovery Plan's Task Y423, we have worked to ''establish a threshold of minimal habitat values to be maintained within each Cumulative Effects Analysis Unit in order to ensure that sufficient habitat is available to support a viable population'' (U.S. Fish and Wildlife Service 1993, p. 55). On June 17, 1997, we held a public workshop in Bozeman, Montana, to develop and refine habitat-based recovery criteria for the grizzly bear. A **Federal Register** notice notified the public of this workshop and provided interested parties an opportunity to participate and submit comments (62 FR 19777, April 23, 1997). After considering 1,167 written comments, we developed biologically-based habitat recovery criteria with the overall goal of maintaining or improving habitat conditions at levels that existed in 1998.

There is no published method to deductively calculate minimum habitat values required for a healthy and recovered population. Recognizing that grizzly bears are opportunistic omnivores and that a landscape's ability to support grizzly bears is a function of overall habitat productivity, the distribution and abundance of major food sources, the levels and type of human activities, grizzly bear social systems, bear densities, and stochasticity, we selected 1998 levels as our baseline level. We chose this year because it was known that these habitat values had adequately supported an increasing Yellowstone grizzly bear population throughout the 1990s (Eberhardt *et al.* 1994, p. 362; Knight and Blanchard 1995, pp. 5, 9; Knight *et al.* 1995, p. 247; Boyce *et al.* 2001, pp. 10–11) and that levels of secure habitat (defined as areas more than 500 meters (m) (1650 feet (ft)) from a motorized access route and greater than or equal to 4 hectares (ha) (10 acres (ac)) in size (U.S. Fish and Wildlife Service 2007, pp. 41)) and the number and capacity of developed sites had changed little from 1988 to 1998 (USDA Forest Service 2004, pp. 140–141, 159–162).

The habitat-based recovery criteria lay out detailed management objectives and approaches to manage motorized access, maintain or increase secure habitat, limit increases in site development, and assure no increase in livestock allotments. As each of these management objectives are central to potential present or threatened destruction, modification, or curtailment of habitat or range, each of these criteria are discussed in detail

under Factor A below. These habitat-based recovery criteria have been met.

Additionally, we developed four general habitat-based parameters that will be monitored and related to demographic and population monitoring results—(1) Productivity of the four major foods; (2) habitat effectiveness as measured by the Cumulative Effects Model; (3) grizzly bear mortality numbers, locations, and causes; grizzly bear/human conflicts; nuisance bear management actions; bear/hunter conflicts; and bear/livestock conflicts; and (4) development on private lands (U.S. Fish and Wildlife Service 2007, pp. 25–60). The agencies will monitor, and the Study Team will annually analyze and report on the relationships between grizzly bear population and demographic data, and the availability and distribution of the four most important bear foods, habitat effectiveness, nuisance bear control actions, numbers and distribution of bear/human and bear/livestock conflicts, hunter numbers, and development on private lands. This information will be used to calculate an index of habitat sufficiency and to monitor relationships between decreases in foods or increases in human activity, and increasing bear mortality or changes in bear distribution that might impact the Yellowstone grizzly bear population. These analyses will use the demographic values of a stable to increasing population as a benchmark to be maintained. The current habitat-based recovery criteria have been appended to the Recovery Plan and are included in the Strategy.

Population and Demographic Management—In 2000, we began a process to reevaluate the methods used to measure the status of the bear population, the methods used to estimate population size, and the sustainable level of mortality in the GYA. This process was initiated both in response to the 1995 court order (*Fund for Animals* v. *Babbitt*) and Task Y11 of the 1993 Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1993, p. 44), which suggested that we ''Reevaluate and refine population criteria as new information becomes available.'' The Wildlife Monograph: Temporal, Spatial, and Environmental Influences on the Demographics of Grizzly Bears in the Greater Yellowstone Ecosystem, and the report entitled Reassessing Methods To Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear (hereafter referred to as the Reassessing Methods Document) (Interagency Grizzly Bear Study Team 2005; Interagency Grizzly Bear Study Team 2006) were produced to respond to the need to reevaluate and refine the population criteria. The Wildlife Monograph is divided into separate chapters (Haroldson *et al.* 2006b, pp. 33–42; Harris *et al.* 2006, pp. 44–55; Schwartz *et al.* 2006a, pp. 18–23; Schwartz *et al.* 2006c, pp. 25–31; Schwartz *et al.* 2006d, pp. 9–16; Schwartz *et al.* 2006e, pp. 57–63), and we reference these chapters individually as applicable. Relevant portions of the authors' analyses are summarized below, as well as relevant findings on the likelihood of population persistence (as defined in a population viability analysis (PVA)) into the foreseeable future for the Yellowstone grizzly bear population.

Harris *et al.* (2006, pp. 44–45) used the survival rates calculated by Haroldson *et al.* (2006b, p. 35) and Schwartz *et al.* (2006c, p. 27), and the reproductive rates calculated by Schwartz *et al.* (2006a, p. 19) to model population trajectory for the Yellowstone grizzly bear population between 1983 and 2002. Because the fates of some radio-collared bears were unknown, Harris *et al.* (2006, p. 48) calculated two separate estimates of population growth rate (see our response to Issue 5 under subheading B in the Responses to Public Comments section for additional detail on this methodology). They found that the Yellowstone grizzly bear population increased at a rate between 4.2 and 7.6 percent per year between 1983 and 2002 (Harris *et al.* 2006, p. 48).

Schwartz *et al.* (2006c, p. 29) concluded that grizzly bears are probably approaching carrying capacity inside Yellowstone National Park. Their conclusion resulted from the analysis of survivorship of cubs and yearlings, and of independent bears, inside Yellowstone National Park, outside the Park but inside the Primary Conservation Area (PCA), and outside the PCA, as well as the analysis of bear distribution in those three zones of residency.

Population viability analyses are often used to describe a population's likelihood of persistence in the future. We consider the findings of Boyce *et al.* (2001, pp. 1–11) in the following paragraphs because they reviewed the existing published PVAs for Yellowstone grizzly bears, and updated these previous analyses using data collected since the original analyses were completed. They also conducted new PVAs using two software packages that had not been available to previous investigators. They found that the Yellowstone grizzly bear population had a 1 percent chance of going extinct within the next 100 years and a 4 percent chance of going extinct in the next 500 years (Boyce *et al.* 2001, pp. 1, 10–11). However, these analyses did not consider changes in habitat that may occur, so Boyce *et al.* (2001, pp. 33–34) did not consider any of the PVAs to be sufficient. Instead, they recommended that a habitat-based PVA be developed that would link a grizzly bear population model with a resource selection function rigorously derived from the existing GIS databases compiled for the Cumulative Effects Model. However, given the uncertainty in parameterizing the habitat databases and the relationships between food availability and grizzly bear vital rates, we do not believe such an exercise, if it is ever possible to complete, is necessary to make informed management decisions and maintain a recovered grizzly bear population in the GYA in the foreseeable future. Such uncertainty could result in a model that is even less indicative or representative of potential responses of bears to habitat variation than what is available now. This rule relies upon the best scientific and commercial information available, which we view as more than adequate to support this action.

Mortality control is a key part of any successful management effort; however, some mortality, including human-caused mortality, is unavoidable in a dynamic system where hundreds of bears inhabit large areas of diverse habitat with several million human visitors and residents. In 1977, Eberhardt documented that adult female survival was the most important vital rate influencing population trajectory (Eberhardt 1977, p. 210). Low adult female survival was the critical factor causing decline in the GYA population prior to the mid-1980s (Knight and Eberhardt 1985, p. 331). In the early 1980s, with the development of the first Recovery Plan (U.S. Fish and Wildlife Service 1982, pp. 21–24), agencies began to control mortality and increase adult female survivorship (USDA Forest Service 1986, pp. 1–2; Knight *et al.* 1999, pp. 56–57). The 1982 and 1993 Revised Recovery Plan (U.S. Fish and Wildlife Service 1982, pp. 33–34, U.S. Fish and Wildlife Service 1993, pp. 20–21) established three demographic (population) goals to objectively measure and monitor recovery of the Yellowstone grizzly bear population:

Demographic Recovery Criterion 1—Maintain a minimum of 15 unduplicated (only counted once) females with cubs-of-the-year over a running 6-year average both inside the Recovery Zone and within a 16-km (10-mi) area immediately surrounding the

Recovery Zone. *Status:* This recovery criterion has been met (Haroldson 2006b, p. 12).

Demographic Recovery Criterion 2—Sixteen of 18 bear management units within the Recovery Zone (see map at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*) must be occupied by females with young, with no 2 adjacent bear management units unoccupied, during a 6-year sum of observations. *Status:* This criterion is important as it ensures that reproductive females occupy the majority of the Recovery Zone and are not concentrated in one portion of the ecosystem. This recovery criterion has been met (Podruzny 2006, p. 17).

1993 Demographic Recovery Criterion 3—The running 6-year average for total known, human-caused mortality should not exceed 4 percent of the minimum population estimate in any 2 consecutive years; and human-caused female grizzly bear mortality should not exceed 1.2 percent of the minimum population estimate in any 2 consecutive years. *Status:* The 4 percent limit on total human-caused mortality has not been exceeded since 1995. Because female mortality averaged 7.5 female bears per year for the time period from 2001 to 2004 (Haroldson and Frey 2006, p. 30), even though there were only 2 female mortalities in 2005 and 3 female mortalities in 2006, the high mortality in the preceding years made the 6-year average exceed the 1.2 percent limit in 2004, 2005, and 2006. This means that this component of 1993 Demographic Recovery Criterion 3 was not met in the last consecutive 2-year period of 2005 to 2006.

2007 Demographic Recovery Criterion 3—For independent females (at least 2 years old), the current annual mortality limit, not to be exceeded in 2 consecutive years and including all sources of mortality, is 9 percent of the total number of independent females. For independent males (at least 2 years old), the current annual mortality limit not to be exceeded in 3 consecutive years and including all sources of mortality, is 15 percent of the total number of independent males. For dependent young (less than 2 years old), the current annual mortality limit, not to be exceeded in 3 consecutive years and including known and probable human-caused mortalities only, is 9 percent of the total number of dependent young (Interagency Grizzly Bear Study Team 2005, pp. 36–38). *Status:* Applying the current methodology to the 1999 to 2006 data, mortality limits have not been exceeded for consecutive years for any bear class and, therefore, this criterion has been met (Schwartz, in press).

We no longer consider *1993 Demographic Recovery Criterion 3* to represent the best scientific and commercial data available, nor the best technique to assess recovery of the Yellowstone grizzly bear population because—(1) There is now a method to calculate the total number of independent females from sightings and resightings of females with cubs (Keating *et al.* 2002, p. 173), and this method allows calculation of total population size (Interagency Grizzly Bear Study Team 2005, pp. 12–26) instead of minimum population size as used in the old method (U.S. Fish and Wildlife Service 1993, pp. 41–44); (2) There is now a method to calculate the unknown and unreported mortalities (Cherry *et al.* 2002, pp. 176–181), and this method allows more conservative mortality management based on annually updated information rather than the estimate of unknown and unreported mortality used in the Recovery Plan (U.S. Fish and Wildlife Service 1993, p. 20, 43); and (3) There are now improved and updated data on reproductive performance of Yellowstone grizzly bears (Schwartz *et al.* 2006a, pp. 19–23), updated data on survival of cub and yearling Yellowstone grizzly bears (Schwartz *et al.* 2006c, pp. 25–28), updated data on survival of independent Yellowstone grizzly bears (Haroldson *et al.* 2006b, pp. 33–35), updated data on the trajectory of the Yellowstone grizzly bear population under alternate survival rates (Harris *et al.* 2006, pp. 44–54), and new data on the impacts of spatial and environmental heterogeneity on Yellowstone grizzly bear demographics (Schwartz *et al.* 2006e, pp. 58–61). These improved data and analyses, since the development of the *1993 Demographic Recovery Criterion 3* (U.S. Fish and Wildlife Service 1993, pp. 41–44), allow improved mortality management based on more accurate calculations of total population size, and the establishment of sustainable mortality for independent females, independent males, and dependent young.

As stated above, the update to *1993 Demographic Recovery Criterion 3* began in 2000, as per Task Y11 of the 1993 Recovery Plan (U.S. Fish and Wildlife Service 1993, p. 44) and the court remand to the Service for further study and clarification (*Fund for Animals* v. *Babbitt*). When this review began in 2000, the *1993 Demographic Recovery Criterion 3* had been achieved since 1998 (Haroldson and Frey 2006, p. 35). It was only since 2004, 4 years after the reassessment work began, that the 1993 criterion was not met (Haroldson and Frey 2006, p. 35).

Although the 1993 Recovery Plan suggested calculating sustainable mortality as a percentage of the minimum population estimate (as outlined in Demographic Recovery Criterion 3), this method no longer represents the best scientific and commercial data available (Interagency Grizzly Bear Study Team 2005, pp. 8–9). The Study Team conducted a critical review of both current and alternative methods for calculating population size, estimating the known to unknown mortality ratio, and establishing sustainable mortality levels for the Yellowstone grizzly population (Interagency Grizzly Bear Study Team 2005, pp. 13–41). The product of this work is the aforementioned Reassessing Methods Document, which evaluates current methods, reviews recent scientific literature, examines alternative methods, and recommends the most scientifically valid techniques based on these reviews (Interagency Grizzly Bear Study Team 2005, pp. 41–45). This Reassessing Methods Document was sent out to three peer reviewers, and the comments of the reviewers were incorporated into the final document that was released to the public in November of 2005 (70 FR 70632, November 22, 2005). These peer reviews are available in the administrative record for this final rule. We requested public comment on the Reassessing Methods Document (70 FR 70632–70633, Nov. 22, 2005). In response to the comments received, the Study Team prepared a Supplement to the Reassessing Methods Document, which addresses many of the concerns raised during the public comment period (Interagency Grizzly Bear Study Team 2006). This Supplement also underwent peer review. Both the Reassessing Methods Document and its Supplement are accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.*

The end result of this critical review and analysis are revised methods for calculating population size, estimating the known to unknown mortality ratio, and establishing sustainable mortality levels for the Yellowstone grizzly population based on the best available science. These methods and the *2007 Demographic Recovery Criterion 3* were appended to the Recovery Plan as a supplement and included in the Strategy (72 FR 11376; 72 FR 11376–11377).

The current method is a much more comprehensive mortality management approach. Between 1980 and 2002,

approximately 21 percent of all known grizzly bear deaths were from undetermined causes (Servheen *et al.* 2004, p. 15). These deaths could not be counted against the 4 percent human-caused mortality limit using the previous method because the cause of death could not be confirmed. The previous method also assumed a 2-to-1 ''known-to-unknown'' mortality ratio. Many researchers hypothesize that unknown mortality is much higher than that suggested by a ratio of ''known-to-unknown'' of 2-to-1 (Knight and Eberhardt 1985, pp. 332–333; McLellan *et al.* 1999, p. 916). After careful consideration and using the best available science, the Study Team adopted a new more conservative ''known-to-unknown'' mortality ratio of approximately 1-to-2 that is recalculated each year based on the number of known, reported deaths (Cherry *et al.* 2002, p. 179; Interagency Grizzly Bear Study Team 2005, pp. 39–41).

Annual allowable mortality limits for each bear class (independent female, independent male, and dependent young) are calculated annually based on total population estimates of each bear class for the current year (Interagency Grizzly Bear Study Team 2005, pp. 5–9). The Study Team calculates both the total population size and the mortality limits within an area designated by the Strategy (see The Conservation Strategy section of the rule below) that overlaps and extends beyond suitable habitat (see Figure 1 below). For independent females, a 9 percent limit was considered sustainable because simulations have shown that this level of adult female mortality rate allows a stable to increasing population 95 percent of the time (Harris *et al.* 2006, p. 50). For independent males, a 15 percent limit was considered sustainable because it approximates the level of male mortality in the GYA from 1983 to 2001 (Haroldson *et al.* 2006b, p. 38), a period when the mean growth rate of the population was estimated at 4 to 7 percent per year (Harris *et al.* 2006, p. 48). Independent males can endure a higher rate of mortality compared to females without affecting the overall stability or trajectory of the population because they contribute little to overall population growth (Mace and Waller 1998, pp. 1009–1013; Interagency Grizzly Bear Study Team 2005, p. 39). Similarly, the 9 percent limit on human-caused mortality for dependent young was chosen because this level of mortality is less than the 15 percent human-caused mortality documented for each sex of this age group from 1983 to 2001, a period of population growth and expansion (Interagency Grizzly Bear Study Team 2005, pp. 9, 36–38). Although it is known that dependent bears experience far higher natural mortality rates than independent bears (Schwartz *et al.* 2006c, p. 30), there is no known way to sample these mortalities directly in the field. Instead, these rates are calculated from consecutive years of observing radio-collared females with cubs-of-the-year.

These mortality limits can be reduced by individual management agencies of the multi-agency Yellowstone Grizzly Coordinating Committee (hereafter referred to as the Coordinating Committee and further described in Factor D below) within their jurisdictions, as part of the Coordinating Committee management process to meet the Strategy and the State plans' management objectives. These mortality limits, as described above in the Conservation Strategy Management Area (Figure 1), cannot be increased above the limits of 9 percent for independent females, 15 percent for independent males, and 9 percent for dependent young, unless such an increase is justified or supported by new scientific findings using the best available science, and the basis for this increase is documented by the Study Team in a report to the Coordinating Committee. Any such recommendation to increase mortality limits would be considered an amendment to the Strategy open for public comment, and requiring a majority vote by the Coordinating Committee before finalization (U.S. Fish and Wildlife Service 2007, p. 63).

The Study Team will reevaluate mortality limits every 8 to 10 years, or as new scientific information becomes available (Interagency Grizzly Bear Study Team 2005, p. 45), or at the request of the Coordinating Committee. Allocation of mortality limits within the Conservation Strategy Management Area (see Figure 1 below) among management jurisdictions is the responsibility of the Coordinating Committee, but total mortality for independent females, independent males, and dependent young within the Conservation Strategy Management Area (see Figure 1 below) must remain at or below the sustainable mortality limits established by the Study Team. This allocation process may be used to adjust mortality numbers among jurisdictions to achieve management objectives while staying within the overall mortality limits.

The Conservation Strategy—In order to provide adequate regulatory mechanisms after delisting and ensure the long-term maintenance of a recovered population, the Recovery Plan calls for the development of ''a conservation strategy to outline habitat and population monitoring that will continue in force after recovery'' (Recovery Plan Task Y426) (U.S. Fish and Wildlife Service 1993, p. 55). To accomplish this goal, in 1993, we created the Interagency Conservation Strategy Team. This team included biologists from the Service, the National Park Service, the USDA Forest Service, the IDFG, the WGFD, and the MTFWP.

In March 2000, a draft Conservation Strategy for the GYA was released for public review and comment (65 FR 11340, March 2, 2000). Also in 2000, a Governors' Roundtable was organized to provide recommendations from the perspectives of the three States that would be involved with grizzly bear management after delisting. In 2003, the draft Final Conservation Strategy for the Grizzly Bear in the GYA was released, along with drafts of State grizzly bear management plans (all accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). We have responded to all public comments received on the Strategy and finalized the Strategy (72 FR 11376). The Strategy will become effective once this final rule takes effect.

The purpose of the Strategy and associated State and Federal implementation plans is to—(1) Describe, summarize, and implement the coordinated efforts to manage the grizzly bear population and its habitat to ensure continued conservation of the Yellowstone grizzly bear population; (2) specify and implement the population, habitat, and nuisance bear standards to maintain a recovered grizzly bear population for the foreseeable future; (3) document the regulatory mechanisms and legal authorities, policies, management, and monitoring programs that exist to maintain the recovered grizzly bear population; and (4) document the actions which the participating agencies have agreed to implement (U.S. Fish and Wildlife Service 2007, pp. 5–6).

The Strategy identifies and provides a framework for managing two areas, the PCA and adjacent areas of suitable habitat where occupancy by grizzly bears is anticipated as per the State plans. The PCA boundaries (containing 23,853 sq km (9,210 sq mi)) correspond to those of the Yellowstone Recovery Zone (U.S. Fish and Wildlife Service 1993, p. 41) and will replace the Recovery Zone boundary (see Figure 1 below). The PCA contains adequate seasonal habitat components needed to support the recovered Yellowstone grizzly bear population for the foreseeable future and to allow bears to continue to expand outside the PCA.

The PCA includes approximately 51 percent of the suitable habitat within the DPS and approximately 84 to 90 percent of the population of female grizzly bears with cubs (Schwartz *et al.* 2006b, pp. 64–66).

The Strategy will be implemented and funded by both Federal and State agencies within the Yellowstone DPS. The USDA Forest Service, National Park Service, and BLM will cooperate with the State wildlife agencies (MTFWP, IDFG, and WGFD) to implement the Strategy and its protective habitat and population standards. The USDA Forest Service and National Park Service (which collectively own and manage approximately 98 percent of the PCA) are responsible for maintaining or improving habitat standards inside the PCA and monitoring population criteria. Specifically, Yellowstone National Park, Grand Teton National Park, and the Shoshone, Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer, and Gallatin National Forests are the primary areas with Federal responsibility for implementing the Strategy. Affected National Forests and National Parks have incorporated the habitat standards and criteria into their Forest Plans and National Park management plans via appropriate amendment processes so that they are legally applied to these public lands within the Yellowstone DPS boundaries (Grand Teton National Park 2006, p. 1; USDA Forest Service 2006b, p. 4; Yellowstone National Park 2006, p. 12).

Outside of the PCA, grizzly bears will be allowed to expand into suitable habitat as per direction in the State management plans. Here, the objective is to maintain existing resource management and recreational uses, and to allow agencies to respond to demonstrated problems with appropriate management actions. The key to successful management of grizzly bears outside of the PCA lies in their successfully utilizing lands not managed solely for bears, but in which their needs are considered along with other uses. Currently, approximately 10 to 16 percent of female grizzly bears with cubs occupy habitat outside of the PCA (Schwartz *et al.* 2006b, pp. 64–66). The area of suitable habitat outside of the PCA is roughly 83 percent Federally owned; 6.0 percent Tribally owned; 1.6 percent State-owned; and 9.5 percent privately owned. State grizzly bear management plans (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002; MTFWP 2002; WGFD 2005), the Forest Plan Amendment (USDA Forest Service 2006a), and other appropriate planning documents provide specific management direction for areas outside of the PCA.

This differential management standard (one standard inside the PCA and another standard for suitable habitat outside the PCA) has been successful in the past (USDA Forest Service 2004, p. 19). Lands within the PCA/Recovery Zone are currently managed primarily to maintain grizzly bear habitat, whereas lands outside of the PCA/Recovery Zone boundaries are managed with more consideration for human uses (U.S. Fish and Wildlife Service 1993, pp. 17–18). Such flexible management promotes communication and tolerance for grizzly bear recovery.

As the grizzly bear population within the Recovery Zone has rebounded in response to recovery efforts, there has been a gradual natural recolonization of suitable habitat outside of the PCA/Recovery Zone (Pyare et al. 2004, p. 6). Today, most suitable habitat within the DPS boundaries is occupied by grizzly bears (68 percent) but approximately 14,500 sq km (5,600 sq mi) are still available for recolonization (see suitable habitat analysis in Factor A of this final rule below).

The Strategy is an adaptive, dynamic document that establishes a framework to incorporate new and better scientific information as it becomes available or as necessary in response to environmental changes. Ongoing review and evaluation of the effectiveness of the Strategy is the responsibility of the State and Federal managers and will be updated by the management agencies every 5 years, or more frequently as necessary. Public comments will be sought on all updates to the Strategy (U.S. Fish and Wildlife Service 2007, p. 14).

Previous Federal Actions

On July 28, 1975, the grizzly bear was designated as threatened in the conterminous (lower 48) United States (40 FR 31734–31736). On November 17, 2005, we proposed to designate the GYA population of grizzly bears as a DPS and to remove this DPS from the Federal List of Endangered and Threatened Wildlife. This notice was followed by a 120-day comment period (70 FR 69854, November 17, 2005; 71 FR 8251, February 16, 2006), during which we held two public hearings and four open houses (70 FR 69854, November 17, 2005; 71 FR 4097–4098, January 25, 2006). Included in the public comments was a petition to uplist the Yellowstone DPS to endangered status. All assertions of this petition are addressed either in the Summary of Public Comments section below, in the 5-factor analysis that follows, or in the Reassessing Methods Document's issues and responses summary. A 90-day finding on whether the petition presented substantial information indicating whether the petitioned action may be warranted is included below. Similarly, this final rule addresses the 2004 Administrative Procedure Act petition from the Wyoming Farm Bureau Federation to designate the grizzly bear in the GYA as a DPS (Hamilton et al. 2004). Finally, between 1991 and 1999, we issued warranted-but-precluded findings to reclassify grizzly bears in the North Cascades (56 FR 33892–33894, July 24, 1991; 63 FR 30453–30454, June 4, 1998), the Cabinet-Yaak (58 FR 8250–8251, February 12, 1993; 64 FR 26725–26733, May 17, 1999), and the Selkirk Ecosystems (64 FR 26725–26733, May 17, 1999) from threatened to endangered. These uplisting actions remain precluded by higher priority actions. We hope to further evaluate each of these ecosystems during our upcoming 5-year review. Please refer to the proposed rule for more detailed information on previous Federal actions (70 FR 69861, November 17, 2005).

Distinct Vertebrate Population Segment Policy Overview

Pursuant to the Act, we shall consider for listing or delisting any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the Act and congressional guidance, the Service and the National Marine Fisheries Service published, on December 21, 1994, a draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (DPS Policy) and invited public comments on it (59 FR 65884–65885). After review of comments and further consideration, the Services adopted the interagency policy as issued in draft form, and published it in the **Federal Register** on February 7, 1996 (61 FR 4722–4725). This policy addresses the establishment of DPSs for potential listing and delisting actions.

Under our DPS policy, three factors are considered when determining whether or not a population can be considered a DPS. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are—(1) discreteness of the population segment in relation to the remainder of the taxon (i.e., *Ursus arctos horribilis*); (2) the significance of the population segment to the taxon to which it belongs (i.e., *Ursus arctos horribilis*); and (3) the population segment's conservation status in relation

to the Act's standards for listing (i.e., is the population segment endangered or threatened).

Application of the Distinct Population Segment Policy

Although the DPS Policy does not allow State or other intra-national governmental boundaries to be used as the basis for determining the discreteness of a potential DPS, an artificial or manmade boundary may be used to clearly identify the geographic area included within a DPS designation. Easily identifiable manmade projects, such as the center line of interstate highways, Federal highways, and State highways are useful for delimiting DPS boundaries. Thus, the Yellowstone DPS consists of—that portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; and that portion of Wyoming south of Interstate Highway 90, west of Interstate Highway 25, Wyoming State Highway 220, and U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection), and north of Interstate Highway 80 and U.S. Highway 30 (see Figure 1 below). Due to the use of highways as easily described boundaries, large areas of unsuitable habitat were included in the DPS.

The core of the Yellowstone DPS is the Yellowstone Recovery Zone (24,000 sq km (9,200 sq mi)) (U.S. Fish and Wildlife Service 1993, p. 39). The Yellowstone Recovery Zone includes Yellowstone National Park; a portion of Grand Teton National Park; John D. Rockefeller Memorial Parkway; sizable contiguous portions of the Shoshone, Bridger-Teton, Targhee, Gallatin, Beaverhead-Deerlodge, and Custer National Forests; BLM lands; and surrounding State and private lands (U.S. Fish and Wildlife Service 1993, p. 39). As grizzly bear populations have rebounded and densities have increased, bears have expanded their range beyond the Recovery Zone, into other suitable habitat. Grizzly bears in this area now occupy about 36,940 sq km (14,260 sq mi) in and around the Yellowstone Recovery Zone (Schwartz *et al.* 2002, p. 207; Schwartz *et al.* 2006b, pp. 64–66). No grizzly bears originating from the Yellowstone Recovery Zone have been suspected or confirmed beyond the borders of the Yellowstone DPS.

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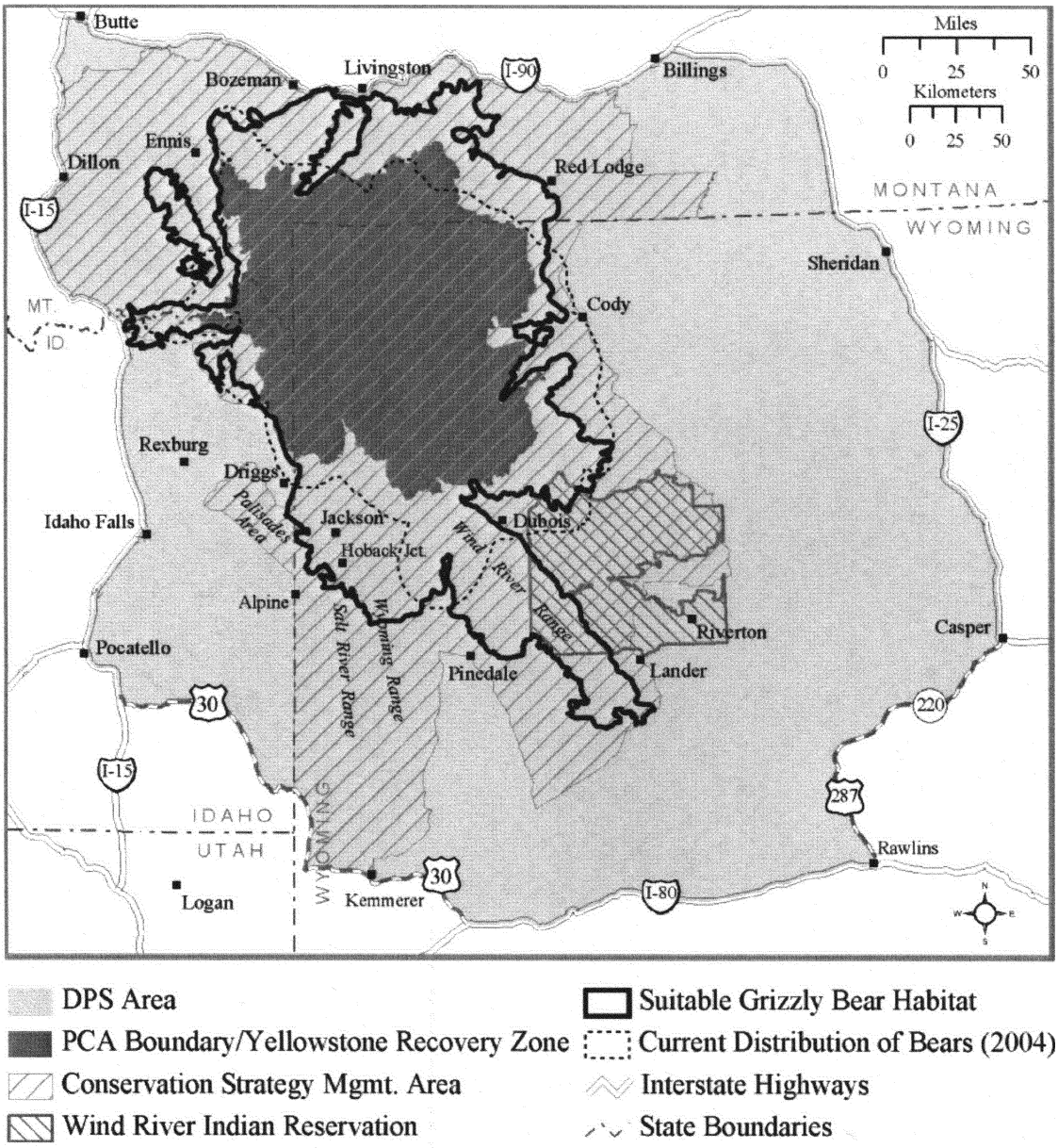

Figure 1. This figure illustrates boundaries for — (1) the Yellowstone grizzly bear Distinct Population Segment (DPS) area; and (2) the Primary Conservation Area (PCA) within which the habitat standards in the Conservation Strategy apply (the boundaries of the PCA also correspond to those of the Yellowstone Recovery Zone); (3) the Conservation Strategy Management Area in which all population and mortality standards will be monitored and calculated; (4) the current distribution of grizzly bears (Schwartz et al. 2006b, pp. 64-66); and (5) Suitable Habitat (as defined in Factor A below).

Analysis for Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions—(1) It is markedly separated from other populations of the same taxon (i.e., *Ursus arctos horribilis*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) (''the inadequacy of existing regulatory mechanisms'') of the Act. Our DPS policy does not require complete reproductive isolation among populations in order to determine that a population is markedly separated from other populations, and allows for some limited interchange among population segments considered to be discrete (61 FR 4722).

The Yellowstone grizzly bear population is the southernmost population remaining in the conterminous States and has been physically separated from other areas where grizzly bears occur for at least 100 years (Merriam 1922, pp. 1–2; Miller and Waits 2003, p. 4334). The nearest population of grizzly bears is found in the NCDE. These populations are separated by land ownership, vegetation, and topographic patterns unsuitable for grizzly bears. The end result is a functional barrier to grizzly bear movement across the landscape and connectivity between the GYA and the NCDE. Grizzly bears from the GYA have not migrated north of the current location of Interstate 90 (the northern boundary of the DPS), probably for at least the last century (Miller and Waits 2003, p. 4334). Meanwhile, during the last decade, there have been periodic reports of grizzly bears from the NCDE as far south as Highway 12 near Helena, Montana. In the last 25 years, two male grizzly bears have been killed near Anaconda, Montana, and the Flint Creek mountains southwest of the NCDE. Both of these reports are approximately 120 km (75 mi) northwest of the most northerly Yellowstone grizzly bears. This distance is too far for normal grizzly bear dispersal distances of roughly 10 to 40 km (6 to 25 mi) (McLellan and Hovey 2001, pp. 841–842; Proctor *et al.* 2004, p. 1108) to effectively connect the NCDE population or other neighboring populations with the Yellowstone DPS. There is currently no connectivity, nor are there any known resident grizzly bears in this area between these two grizzly bear populations.

Because the Yellowstone Ecosystem represents the most southerly population of grizzly bears, connectivity further south is not an issue. Connectivity to the east also is irrelevant to this action as grizzly bears in the lower 48 States no longer exist east of the GYA, and most of the habitat is unsuitable for grizzly bears. Finally, connectivity west into the Bitterroot Mountains is irrelevant to this action because no bears have been documented in this ecosystem in the past 25 years (U.S. Fish and Wildlife Service 1993, p. 12; 65 FR 69624, November 17, 2000; U.S. Fish and Wildlife Service 2000, p. viii).

Genetic data also support the conclusion that grizzly bears from the GYA are demographically markedly separated from other grizzly bears. Genetic studies involving heterozygosity (which provides a measure of genetic variation in either a population or individual) estimates at 8 microsatellite loci show 55 percent heterozygosity in the GYA grizzly bears compared to 69 percent in the NCDE bears (Paetkau *et al.* 1998, pp. 421–424). Heterozygosity is a useful measure of genetic diversity, with higher values indicative of greater genetic variation and evolutionary potential. High levels of genetic variation are indicative of high levels of connectivity among populations or high numbers of breeding animals. By comparing heterozygosity of extant bears to samples from Yellowstone grizzlies of the early 1900s, Miller and Waits (2003, p. 4338) concluded that gene flow and, therefore, population connectivity between the GYA grizzly population and populations to the north was very low historically, even prior to the arrival of settlers. The reasons for this historic limitation of gene flow are unclear. Increasing levels of human activity and settlement in this intervening area over the last century further limited grizzly bear movements into and out of the GYA, resulting in the current lack of connectivity.

Based on our analysis of the best available scientific data, we find that the GYA grizzly population and other remaining grizzly bear populations are markedly separated from each other. This contention is supported by evidence of physical separation between populations (both current and historical) and evidence of genetic discontinuity. Therefore, the Yellowstone DPS meets the criterion of discreteness under our DPS Policy.

Analysis for Significance

If we determine a population segment is discrete, its biological and ecological significance will then be considered in light of congressional guidance that the authority to list DPS's be used sparingly while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon (i.e., *Ursus arctos horribilis*) to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following—(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Below we address Factors 1, 2, and 4. Factor 3 does not apply to the Yellowstone grizzly bear population.

Unusual or Unique Ecological Setting—Grizzly bears in the GYA exist in an unusual and unique ecosystem that has greater access to large-bodied ungulates such as bison (*Bison bison*), elk (*Cervus elaphus*), and moose (*Alces alces*), and less access to fall berries than any other interior North American, European, or Asian grizzly bear populations (Stroganov 1969, p. 128; Mattson *et al.* 1991a, p. 1623; Jacoby *et al.* 1999, p. 925; Schwartz *et al.* 2003b, pp. 568–569). The GYA ecosystem contains extensive populations of ungulates with an estimated 100,000 elk, 29,500 mule deer (*Odocoileus hemionus*) and white-tailed deer (*O. virginianus*), 5,800 moose, 4,000 bison and, relative to other ungulate populations in the area, a small population of pronghorn antelope (*Antilocapra americana*) (U.S. Fish and Wildlife Service 1994, p. ix; Toman *et al.* 1997, p. 56; Smith *et al.* 2003, pp. 337–338). Although grizzly bears are successful omnivores, grizzlies in the rest of the conterminous States (Jacoby *et al.* 1999, p. 925), most of Europe (Berducou *et al.* 1983, pp. 154–155; Clevenger *et al.* 1992, pp. 416–417; Dahle *et al.* 1998, pp. 152–153), and Siberia (Stroganov 1969, p. 128) rely on plant and insect materials for the majority of their diet. In contrast, grizzlies in the GYA rely on terrestrial mammals as their primary source of nutrition, as indicated by bear scat (Mattson 1997, p. 162), feed site analysis (Mattson 1997, p. 167), and bear hair isotope analysis (Jacoby *et al.* 1999, p. 925). Concentration of isotopic nitrogen (^{15}N) in grizzly bear hair from Yellowstone grizzly bears suggests that meat constitutes 45 percent and 79 percent of the annual diet for females and males, respectively (Jacoby *et al.* 1999, p. 925). These high percentages of meat in Yellowstone grizzly bears' diet are in contrast to the 0 to 33 percent of meat in the diet of bears in the NCDE and 0 to 17 percent of meat in the diet of bears from the Cabinet-Yaak Ecosystem (Jacoby *et al.* 1999, p. 925). Furthermore, the source of this animal meat is primarily large-bodied ungulates, not fish, as in other populations of brown bears in Alaska and Siberia (Stroganov 1969, p. 128; Hilderbrand *et al.* 1996, pp. 2086–2087). Of particular relevance is the Yellowstone grizzly bears' use of wild bison, a species endemic to North America, but eradicated in most of the lower 48 States except the GYA by the

end of the 19th century (Steelquist 1998, pp. 16, 30). Although bison numbers have increased since this time, the vast majority of today's bison are found in managed or ranched herds (Steelquist 1998, pp. 33–37). Their habitat, bunchgrass prairie (tallgrass, mixed-grass, and shortgrass prairie), has been almost entirely converted to agricultural lands (Steelquist 1998, p. 11), leaving little opportunity for existence in areas outside of the isolated refuges and ranches where they are commonly found today. Mattson (1997, p. 167) found that wild bison comprised the second largest source of ungulate meat (24 percent) consumed by Yellowstone grizzly bears, second only to elk (53 percent).

The Yellowstone grizzly population also exists in a unique ecological setting because it is able to use whitebark pine seeds as a major food source. Whitebark pine, a tree species found only in North America (Schmidt 1994, p. 1), exhibits annual variation in seed crops, with high seed production in some years and very low seed production in other years (Weaver and Forcella 1986, p. 70; Morgan and Bunting 1992, p. 71). During these years of high seed production, Yellowstone grizzly bears derive as much as 51 percent of their protein from pine nuts (Felicetti *et al.* 2003, p. 767). In fact, grizzly bear consumption of ungulates decreases during years of high whitebark pine seed production (Mattson 1997, p. 169). In most areas of North America where whitebark pine distribution overlaps with grizzly bear populations, bears do not consistently use this potential food source (Mattson and Reinhart 1994, pp. 212–214). This may be due to different climatic regimes that sustain berry-producing shrubs or simply the scarcity of whitebark pines in some areas of the bear's range (Mattson and Reinhart 1994, p. 214). Dependence of Yellowstone grizzly bears on whitebark pine is unique because in most areas of its range, whitebark pine has been significantly reduced in numbers and distribution due to the introduced pathogen white pine blister rust (*Cronartium ribicola*) (Kendall and Keane 2001, pp. 228–232). While there is evidence of blister rust in whitebark pines in the GYA, the pathogen has been present for more than 50 years (McDonald and Hoff 2001, p. 210) and relatively few trees have been severely impacted (see Factor E below). Also, although several berry-producing shrubs occur in the area, these are relatively limited by climatic factors and most grizzly bears in the GYA do not rely on berries as a significant portion of their diets.

Significant Gap in the Range of the Taxon—Loss of the Yellowstone DPS would represent a significant gap in the range of the taxon. As noted above, grizzly bears once lived throughout the North American Rockies from Alaska and Canada, and south into central Mexico. Grizzly bears have been extirpated from most of the southern portions of their historic range. Today, the Yellowstone DPS represents the southernmost reach of the grizzly bear. The loss of this population would be significant because it would substantially curtail the range of the grizzly bear by moving the range approximately 4 degrees of latitude to the north. Thus, the loss of this population would result in a significant gap in the current range of the taxon.

Given the grizzly bear's historic occupancy of the conterminous States and the portion of the historic range the conterminous States represent, recovery in the lower 48 States where the grizzly bear existed in 1975 when it was listed has long been viewed as important to the taxon (40 FR 31734–31736, July 28, 1975). The Yellowstone DPS is significant in achieving this objective, as it is 1 of only 5 known occupied areas and constitutes approximately half of the remaining grizzly bears in the conterminous 48 States. Finally, the Yellowstone DPS represents the only grizzly bear population not connected to bears in Canada.

Marked Genetic Differences—Several genetics studies have confirmed the uniqueness of grizzly bears in the GYA. The GYA population has been isolated from other grizzly bear populations for approximately 100 years or more (Miller and Waits 2003, p. 4334). Yellowstone grizzly bears have the lowest relative heterozygosity of any continental grizzly population yet investigated (Paetkau *et al.* 1998, pp. 421–424; Waits *et al.* 1998a, p. 310). Only Kodiak Island grizzly bears, a different subspecies (*Ursus arctos middendorfi*), have lower heterozygosity scores (26.5 percent), reflecting as much as 12,000 years of separation from mainland populations (Paetkau *et al.* 1998, p. 421; Waits *et al.* 1998b, pp. 412–413). Miller and Waits (2003, p. 4338) conclude that gene flow between the GYA and the closest remaining population was limited prior to the arrival of European settlers but could only speculate as to the reasons behind this historical separation. The apparent long-term difference in heterozygosity between Yellowstone and other Montana populations indicates a unique set of circumstances in which limited movement between these areas has resulted in a markedly different genetic situation for the Yellowstone population.

We conclude that the Yellowstone grizzly population is significant because it exists in an unusual and unique ecological setting; the loss of this population would result in a significant gap in the range of the taxon; and this population's genetic characteristics differ markedly from other grizzly bear populations.

Conclusion of Distinct Population Segment Review

Based on the best scientific and commercial data available, as described above, we find that the Yellowstone grizzly bear population is discrete from other grizzly populations and significant to the remainder of the taxon (i.e., *Ursus arctos horribilis*). Because the Yellowstone grizzly bear population is discrete and significant, it warrants recognition as a DPS under the Act.

It is important to note that the DPS Policy does not require complete separation of one DPS from other populations, but instead requires ''marked separation.'' Thus, if occasional individual grizzly bears disperse among populations, the Yellowstone grizzly bear DPS would still display the required level of discreteness per the DPS Policy. And, as stated in the 1993 Recovery Plan, we recognize that natural connectivity is important to long-term grizzly bear conservation and we will continue efforts to work toward this goal independent of the delisting of the Yellowstone DPS (U.S. Fish and Wildlife Service 1993, p. 53). This issue is discussed further under Factor E below. In addition, the conclusion regarding the conservation status (step 3 of the DPS analysis) of the Yellowstone DPS follows the 5-factor analysis discussion below.

Summary of Public Comments

In our proposed rule, we requested that all interested parties submit information, data, and comments concerning the status of grizzly bears in the GYA, their habitat, and their management (70 FR 69882, November 17, 2005). The comment period was open from November 17, 2005, through March 20, 2006 (70 FR 69854, November 17, 2005; 71 FR 8251, February 16, 2006). During this time, we held two formal public hearings and four informational meetings (70 FR 69854, November 17, 2005; 71 FR 4097–4098, January 25, 2006). In addition, there were numerous press releases, a press conference with the Secretary of the Interior, and a conference call with

numerous environmental groups and non-government organizations discussing the proposed rule. Comments could be hand delivered to us or submitted to us via e-mail, mail, or public hearing testimony.

During the 120-day comment period, we received comments from 164,486 individuals, organizations, and government agencies. Those comments arrived in 193,578 letters, form letters, public hearing testimonies, and email messages. Numerous respondents submitted multiple comments, so the total number of comments received (193,578) is greater than the total number of people/groups responding (164,486). Twelve of these letters were signed as ''petitions'' with 974 signatures. Finally, one of the above comment letters also formally petitioned the Service to list the Yellowstone grizzly bear DPS as endangered under the Act and designate critical habitat. All assertions of this petition are addressed either in this section, in the 5-factor analysis that follows, or the Reassessing Methods Document's issues and responses summary.

We have read and considered all comments received. A content analysis of these comments is available upon request (see **ADDRESSES** section above) or online at: *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.* We updated the proposed rule where it was appropriate, and we respond to all substantive issues received, below. We have grouped similar comments together in ''Issues,'' each of which is followed by our ''Response.''

A. General Comments

Issue 1—Numerous comments suggesting corrections to facts and data in the proposed rule such as correcting typographical errors, including omitted cooperators, and modifying the presentation of statistical results. One commenter noted our reference to the DPS as both a ''population'' and an ''area.'' This commenter also noted inconsistencies in our use of the words ''population'' and ''populations'' in the proposed rule and asked if there is one population or multiple populations within the DPS boundaries.

Response—There is one population within the DPS boundaries and the appropriate changes have been made in the text of the final rule to clarify this, as well as the other matters raised in Issue 1.

Issue 2—A few commenters disputed the Service's claim that the nearest grizzly bear population to the Yellowstone DPS is 130 km (80 mi) away. According to these commenters, grizzly bears originating from the NCDE have been documented near Anaconda, Montana, and one grizzly bear originating from the Yellowstone DPS was sighted north of Bozeman, Montana, in the Bridger Mountains. Furthermore, one commenter noted that the Tobacco Root Vegetation Management Plan Final Environmental Impact Statement (USDA Forest Service 2001, p. 44) describes the Tobacco Roots as habitat occupied by grizzlies on both a resident and transient basis. This puts the two populations only 72 km (45 mi) apart.

Response—We know of two records of grizzly bears near Anaconda, Montana. In one case, the carcass of a subadult male grizzly bear was discovered by a hunter in 1980. The other report notes a 2005 incident in which a hunter mistakenly shot a grizzly bear 11 km (7 mi) west of Anaconda that was determined to be from the NCDE with DNA analysis. There are no other verified reports of grizzly bears within 76 km (45 mi) of Anaconda. The Study Team has no record of any grizzly bears in the Bridger Mountains or in the Tobacco Root Mountains. Despite what the Final Environmental Impact Statement for the Tobacco Root Vegetation Management Plan may identify as occupied habitat, a study conducted in the Tobacco Roots in 1999 and 2000 failed to document grizzly bear presence (Lukins *et al.* 2004, p. 171). In the final rule, we corrected the distance between the Yellowstone grizzly bear population and the nearest bears to account for these two records near Anaconda, Montana. This resulted in the closest possible distance between the Yellowstone population and the nearest record of a grizzly bear as 120 km (75 mi) instead of 130 km (80 mi) as reported in the proposed rule.

Issue 3—One commenter disputed our claim that 30 percent of suitable habitat outside the PCA within the DPS is protected by official Wilderness Area designation, instead suggesting only 15 percent of occupied habitat outside the PCA within the DPS is protected as Wilderness.

Response—This numeric disparity centers around a difference in our frame of reference. Our calculation is the percentage of ''suitable habitat'' outside the PCA within the DPS (6,799 sq km (2,625 sq mi)) that is protected by Wilderness Area designation (22,783 sq km (8,797 sq mi)). In contrast, this comment is referring to ''occupied habitat'' outside the PCA within the DPS protected by Wilderness Area designation. We considered suitable habitat because we expect grizzly bears to naturally recolonize much of the remaining unoccupied suitable habitat in the next few decades.

Issue 4—Several commenters noted that our definition of suitable habitat does not consider Wyoming's habitat criteria of ''socially acceptable.'' They request that this inconsistency in definitions be remedied.

Response—Our definition of suitable habitat is based on biological criteria. Some considerations of social acceptance entered into the considerations of suitable habitat in the Wyoming plan. The Wyoming plan does not restrict grizzly bears from areas outside their definition of suitable habitat. Instead, it establishes management objectives in these areas to minimize conflicts between bears and human activities. Because most grizzly bears do not come into conflict with humans, the impact of this difference in designation of suitable habitat between the Service and Wyoming will have little functional impact on grizzly bear occupancy or mortality.

B. Population Concerns

Issue 1—Several commenters noted their concern about the occurrence of high levels of female mortality since 2000 and requested that the impact of this trend be analyzed. It was noted that the allowable adult female mortality was exceeded in 2004 and 2005; therefore, the recovery goal that adult female mortality cannot be exceeded in 2 consecutive years has not been met. These commenters asked that we explain why delisting is being proposed when one of the recovery goals has not been met.

Response—Recovery plans are intended to provide guidance and are subject to revision as new data are reported. They are not regulatory documents. Recovery of species requires adaptive management that may, or may not, fully follow the guidance provided in a recovery plan. That said, we no longer consider 1993 Demographic Recovery Criterion 3 to represent the best scientific and commercial data available nor the best technique to assess recovery of the Yellowstone grizzly bear population. Therefore, the 1993 mortality management system for the Yellowstone grizzly bear population has been reevaluated and revised using a recent and more accurate model (Harris *et al.* 2006, pp. 51–55). This approach was consistent with a 1995 court order to reevaluate this issue (*Fund for Animals* v. *Babbitt*) and Recovery Plan Task Y11, which suggested we work to ''determine population conditions at which the species is viable and self sustaining,'' and to ''reevaluate and refine

population criteria as new information becomes available'' (U.S. Fish and Wildlife Service 1993, p. 44). Under the revised methods for calculating sustainable mortality, female mortality was not exceeded in either 2004 or 2005. These changes have been appended to the Recovery Plan and the Strategy.

Issue 2—Some commenters felt that delisting was premature without a PVA based on future habitat conditions and that PVAs based simply on past population trends are inadequate. A habitat-based PVA could determine how future habitat conditions such as the availability of major food sources, climate change, increasing human populations, and resource extraction may affect the long-term persistence of the Yellowstone DPS. One commenter referred to a similar PVA conducted by ''Boyce *et al.* (2005)'' on grizzly bears in Alberta, Canada, and suggested that Boyce be contracted to do this analysis for the Yellowstone DPS.

Response—When we contacted the commenter who suggested we consider employing a technique similar to ''Boyce *et al.* (2005)'', we were told that the correct citation for that article was Nielsen *et al.* 2006. Nielsen *et al.* (2006, pp. 219–221) predicted adult female grizzly bear occupancy and mortality across the landscape. Their exercise did not make any attempt to predict the long-term viability of the grizzly bear population in Alberta and, in this sense, was not a habitat-based PVA. Instead, Nielson *et al.* (2006, pp. 226–227) attempted to provide a useful tool to managers that linked not only occupancy, but also survival, to habitat conditions.

In our view, a PVA based on possible future habitat conditions relies upon too many speculative variables to be relied upon to determine long-term persistence. Given the compound uncertainties associated with projections of possible future habitat changes, and the grizzly bear's corresponding responses to those changes, it is unlikely that a habitat-based PVA would provide an accurate representation of future population viability for Yellowstone grizzly bears. The management system outlined in the Strategy depends on monitoring of multiple indices including production and availability of all major foods; and monitoring of grizzly bear vital rates including survival, age at first reproduction, reproductive rate, mortality cause and location, dispersal, and human/bear conflicts. These data will be used in an adaptive management system to monitor the real-time status of the population and its relationship with major foods and environmental variables, allowing managers to implement actions that respond to changes in ecological conditions and/or vital rates. The continued monitoring of these multiple indices will allow rapid feedback on the success of management actions in maintaining a viable population. In addition, please see our response to Issue 12 under subheading F in the Summary of Peer Review Comments section below for more information on the models the Study Team is pursuing.

Issue 3—One commenter stated that the Yellowstone DPS range has not expanded as much as we claim according to the 1980 Study Team report of verified sightings near Ketchum, Idaho, and Cody, Wyoming.

Response—Because the cited 1980 Study Team report provides no information regarding the verification of the reported sighting near Ketchum, Idaho, it is impossible to make any conclusions on the sighting's credibility. There is no reason to connect this supposed sighting to the Yellowstone ecosystem or to indicate that a bear sighted there might have come from Yellowstone. We did not rely solely on sightings of grizzly bears to make the statement that the population's range had expanded. Instead, we used peer-reviewed literature that documented this range expansion through multiple data sources, including initial observations of unduplicated females with young, locations of radio-collared bears, and locations of grizzly bear/human conflicts (Schwartz *et al.* 2002, p. 204; Schwartz *et al.* 2006b, p. 63). We are confident that the Yellowstone grizzly bear population's range has expanded significantly since 1980 and the sightings from this time do not contradict the conclusions established by Schwartz *et al.* (2002, p. 207) and Schwartz *et al.* (2006b, p. 66).

Issue 4—One commenter noted that because ''persistence time depends strongly on the magnitude of the variance in population growth rate'' and the Yellowstone population size estimates are extremely variable, we should consider this and other sources of stochasticity in our decision.

Response—These variations have been considered in detail. The considerations of the variation of results is thoroughly evaluated and discussed in Harris *et al.* (2006, p. 46), Schwartz *et al.* (2006d, p. 14), Schwartz *et al.* (2006e, pp. 62–63), the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2005, pp. 25, 35–36), and its Supplement (Interagency Grizzly Bear Study Team 2006, pp. 2–10). Throughout the rulemaking process we also carefully considered the matter of uncertainty and its implications to management decisions. For additional discussion about sources of stochasticity and their effects on population persistence, see our response to Issue 5 under subheading R below.

Issue 5—One commenter noted that the Service presents the estimated annual population growth rate as between 4 and 7 percent per year. This presentation deceptively makes it seem that these are the upper and lower bounds of a confidence interval, not merely two point estimates based on different assumptions; and, the Service claims that the total population size in 2004 was 588 individuals but does not disclose the confidence intervals around this estimate.

Response—The 4 to 7 percent annual population growth rate is based on analyses conducted by Harris *et al.* (2006, p. 48) using survival estimates of grizzly bears determined by Haroldson *et al.* (2006b, p. 36). Haroldson *et al.* (2006b, p. 34–35) used a data set of 323 independent (greater than 2 years old) radio-collared bears, but analyzed the data two different ways to address the bears with unknown fates. Specifically, they estimated the survival rate for each of those data sets, assuming bears whose fates were unknown either all lived or all died, to establish the most conservative and most optimistic survival rates. The true estimate must be bracketed by those two bounds. The resulting annual survival rates of independent female bears were either 92.2 percent or 95.0 percent depending on which interpretation of unknown fate is used.

Harris *et al.* (2006, p. 48) then used the two survival estimates produced by Haroldson *et al.* (2006b, p. 35) to estimate the growth rate of the GYA grizzly population from 1983 to 2002. For the estimate of population growth rate based on the assumption that all females with unknown fates died at last contact, the mean value of lambda is 1.042, with an approximate 95 percent confidence interval of 0.969–1.093. For the estimate of population growth rate when adult survival was estimated assuming females with unknown fates survived, the mean value is 1.076, with an approximate 95 percent confidence interval of 1.003–1.113.

These population growth rates mean that the Yellowstone grizzly bear population was increasing at a rate of 4.2 percent or 7.6 percent per year between 1983 and 2002 (Harris *et al.* 2006, p. 48). Those estimates are often reported as ''a growth rate between 4 percent and 7 percent.'' That does not refer to a 95 percent confidence interval.

Instead, it refers to an estimate based on the assumption that all bears whose fates were unknown died at the time their radio transmissions stopped (4.2 percent), and an estimate based on the assumption that all bears whose fates were unknown were alive at the time their radio transmissions stopped (7.6 percent). Those assumptions result in conservative bounds, because some bears assumed to have died in the 4 percent growth rate data set were probably still alive, and because some bears assumed to be alive in the 7 percent growth rate data set were probably dead. The true population growth rate from 1983 to 2002 was probably between 4 and 7 percent.

Regarding the confidence interval around the total population estimate, the index of total population size is produced using the total number, an estimate of the total number of females with cubs-of-the-year (Interagency Grizzly Bear Study Team 2005, pp. 24–26), and the proportions of females in the population applied to the proportions of sex and age classes in the population. The Chao2 estimator, a statistical tool used to correct sighting variability, was chosen by the Study Team to estimate the number of females with cubs-of-the-year (Keating *et al.* 2002, p. 170; Interagency Grizzly Bear Study Team 2005, pp. 25–26) because it consistently returns results that are correct or biased low (Interagency Grizzly Bear Study Team 2005, p. 20). Confidence intervals for the total population index from years 1983 to 2005 are reported in the Supplement to the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2006, p. 15). For 2005, the total population index is 546 bears with a 95 percent confidence interval between 491 and 602 (Interagency Grizzly Bear Study Team 2006, p. 15).

Issue 6—Several commenters questioned why we were not using deoxyribonucleic acid (DNA) based methods, like the survey conducted in the NCDE during the summer of 2004, to get an accurate estimate of total population size. They considered DNA to be the best available method and wondered why this method was not employed before proposing to delist this population.

Response—The methods developed for producing a population index in the Yellowstone ecosystem are based on the best available science and built on intensive sampling of this population for almost 26 years. These methods produce annually updated population size indices and continuously updated population trend estimates. Although the use of DNA to estimate population size has become more common in recent years (Mowat and Strobeck 2000, p. 183; Bellemain *et al.* 2005, p. 150; Solberg *et al.* 2006, p. 158), the method used to make a one-time total population estimate for the NCDE would be less useful in the GYA than current methods. DNA was chosen as the population estimate system in the NCDE because this ecosystem did not have the long-term consistent sampling data that exists in Yellowstone. The final point estimate for population size in the NCDE will be available in early 2007 and will be a one-time estimate for 2004—the year the sampling was done. Once completed, this DNA-based system will have taken 4 years and cost $4.5 million, to produce a 2004 population estimate. Given that the long-term intensive data were available in Yellowstone, population size estimates based upon peer-reviewed, published methods existed, and because the methods used in Yellowstone allow continuously updated population indices rather than a one-time estimate, the application of a DNA-based system was unnecessary for the Yellowstone ecosystem.

Issue 7—One commenter noted that we violated the Administrative Procedure Act and the Endangered Species Act by not disclosing the apparent ''population crash'' that occurred in 2005 using the revised methods described in the Reassessing Methods Document (2004 = 588, 2005 = 350) and discussing its implications for the population.

Response—No population crash occurred in 2005. In 2004, a large number of females had cubs. Because female grizzly bears usually produce litters once every 3 years, high cub production years are typically followed by years with fewer cubs because less of the adult female population is available for breeding. The index of total population size described in the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2005, pp. 5–9) is not equivalent to an exact number of animals in the population due to this natural biological variation associated with cub production in grizzly bear populations (Interagency Grizzly Bear Study Team 2006, pp. 1–2). Fluctuations in the estimate of population size are expected and addressed through the use of a modeling average technique to estimate the total number of females with cubs-of-the-year (Interagency Grizzly Bear Study Team 2006, pp. 2–7).

Issue 8—One commenter stated that we claim that the Act only mandates that a species be ''viable,'' rather than ''recovered.'' They believed that this perceived interpretation has led us to focus on reducing mortality within occupied habitat rather than restoring formerly wide-ranging species to historically occupied habitat. This commenter noted that the courts have repeatedly rejected this interpretation and that true recovery requires connectivity or linkage, protection and enhancement of existing populations, meaningful habitat protections, adequate regulatory mechanisms, and recolonization of historic suitable habitat such that ecological effectiveness (Trombulak 2006) is restored.

Response—We disagree with the assertion that we have focused on viability instead of recovery. The principal goal of the Act is to return listed species to a point at which protection under the Act is no longer required (50 CFR 424.11(d)(2)). A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened within all or a significant portion of its range (50 CFR 424.11(d)). As described later in this rule, we believe the Yellowstone DPS meets neither of these definitions for listing, thereby justifying delisting due to recovery.

We also disagree with the claim that we have over-emphasized mortality control at the expense of other recovery goals. To date, recovery efforts have focused on sufficient mortality control, habitat monitoring, population levels, distribution, management of habitat effectiveness and habitat security, monitoring of all grizzly bear/human conflicts, genetic analyses, and linkage zone maintenance. This comprehensive approach to recovery has led to reduced mortality, increasing population numbers, and significant increases in range, allowing grizzly bears to reoccupy habitat they have been absent from for decades, as well as demographic and habitat security into the foreseeable future. Grizzly bears now occupy 68 percent of suitable habitat within the DPS and will likely occupy the remainder within the foreseeable future. However, the Service does not believe that restoration of grizzly bears to all historic habitats (particularly those no longer capable of supporting grizzly bear populations) within the DPS boundaries is necessary or possible.

While some have suggested recolonization of historically suitable habitat to achieve ''ecological effectiveness'' (Trombulak 2006), the Act neither requires us to consider ecological effectiveness, nor do we have any objective way of measuring this

type of success currently. We do not believe the restoration of the grizzly bear as a top predator and scavenger throughout all historically occupied habitat is feasible or required. Instead, we have restored grizzly bears to most of their suitable habitat within the DPS and anticipate the State management plans will lead to re-occupancy of the remaining suitable habitat in the near future. Other issues such as linkage are only relevant to this rulemaking to the extent that they impact the Yellowstone DPS. For example, connectivity or a lack thereof, has the potential to impact this population's genetic fitness. As such, this issue is discussed and addressed in our five factor analysis (see Factor E below) and in the Strategy.

C. Public Involvement

Issue 1—Several commenters believe that the Service did not provide meaningful ways for the public in areas other than Bozeman, Montana, Cody and Jackson, Wyoming, and Idaho Falls, Idaho, to participate in a dialogue about this national issue, except via Web sites and mail. Numerous commenters at public hearings, in letters, and in emails encouraged the Service to give greater consideration to opinions of people that live in grizzly bear country than opinions of those that do not have to deal with grizzlies in their daily lives. Conversely, many argued that the grizzly bear is a national and international treasure and that all Americans should have an equal voice in how they are to be managed.

Response—The public comment process considers all comments equally and gives no preference based on where commenters live or what format commenters use to comment. We believe that providing multiple formats for commenting on the proposed rule, including hand delivery, e-mail, and U.S. mail lessened the need for formal hearings throughout the country. Because all comments are considered equally, it does not matter whether comments were submitted via hand delivery, e-mail, mail, or public hearing. In fact, commenting via e-mail, hand delivery, or letter allowed unlimited space to express comments, as opposed to the public hearing format, which limited comments to three minutes in order to provide an opportunity for all attending to speak.

Issue 2—Several commenters stated that asking the public to comment on the proposed rule when none of the supporting documents (Reassessing Methods Document, Habitat-Based Recovery Criteria, the Strategy, and the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests) have been finalized does not allow the public to know what they are commenting on; furthermore, the Act requires an analysis of existing regulatory mechanisms, not those that will be added in the future.

Response—The Strategy and the Habitat-Based Recovery Criteria supplement to the Recovery Plan have been finalized (72 FR 11376; 72 FR 11376–11377). There have been no significant changes from the drafts of Habitat-Based Recovery Criteria, the Strategy, and the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests. All the supporting documents have been available for full public review, in accordance with the Administrative Procedure Act (62 FR 47677, September 10, 1997; 64 FR 38464, July 16, 1999; 64 FR 38465, July 16, 1999; 70 FR 70632, November 22, 2005). The proposed rule also noted that these draft documents were available online at—*http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*. As envisioned by the Administrative Procedure Act, changes to the Reassessing Methods Document were made in response to public comments. These changes did not affect our final determination from that described in the draft rule. We responded to comments in the final documents. The Strategy and the Forest Plan Amendment are existing regulatory mechanisms that are currently in existence and take effect upon implementation of this final rule. Therefore, we considered these mechanisms when determining if the regulatory mechanisms were sufficient to protect the Yellowstone DPS' recovered status.

Issue 3—Some commenters stated that the Service violated the Endangered Species Act and Administrative Procedure Act by not providing the raw data upon which it relied, thereby hindering the public's ability to comment on the proposed rule; ''[T]he Administrative Procedure Act requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule.''

Response—We have a responsibility to rely upon the best scientific and commercial data available. In this case, we relied upon numerous peer reviewed and published documents that we made available upon request. Much of this information was publicly available when we published our proposed rule and during our public comment period. For example, mortality information, including date of death, sex, age, certainty of death, if the bear was marked or not, and location are published annually in the Study Team's annual reports, available at: *http://www.nrmsc.usgs.gov/research/igbst-home.htm*. However, requests received for exact locations of grizzly bears obtained via radio-telemetry and GPS radio-collars (i.e., ''raw data'') could not be honored because this information was not in our possession. Additionally, without the permission of the Secretary of the Interior, the Omnibus Parks and Public Lands Act of 1998 (16 U.S.C. 5937) prohibits the release of specific locations of threatened species that spend any part of their lives within National Parks.

D. Compliance With Court Settlements

Issue 1—Some commenters claimed that the Service violated the Fund for Animals court settlement (*Fund for Animals* v. *Babbitt*), by publishing the proposed rule to delist before finalizing the Habitat Based Recovery Criteria. They noted that the Fund for Animals settlement stated that ''Prior to publishing any proposed rule to delist any grizzly bear population, the Service will establish habitat-based recovery criteria for that population's ecosystem * * * . In any such rulemaking to delist a grizzly bear population, the Service will utilize the Habitat Based Recovery Criteria, as well as all other pertinent recovery criteria that have been established, when addressing the 5 factors set forth in section 4(a)(1) of the Act.''

Response—In 1994, The Fund for Animals, Inc., and 42 other organizations and individuals filed suit over the adequacy of the 1993 Recovery Plan (*Fund for Animals* v. *Babbitt*). The court remanded the Recovery Plan to us for further study, and in 1996 the parties reached a settlement agreement. As part of the settlement we agreed to hold a workshop on the habitat-based recovery criteria and to append habitat-based recovery criteria to the Recovery Plan. On June 17, 1997, we held a public workshop in Bozeman, Montana, to develop and refine habitat-based recovery criteria for the grizzly bear. A **Federal Register** notice notified the public of this workshop and provided interested parties an opportunity to participate and submit comments (62 FR 19777, April 23, 1997).

After considering 1,167 written comments, we developed biologically-based habitat criteria with the goal of maintaining or improving habitat conditions at 1998 levels. These draft criteria were published in the **Federal Register** on July 16, 1999 (64 FR 38464–38465), and a copy of the habitat-based

criteria also is available at—*http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*. These revised habitat-based recovery criteria were relied upon in the proposed rule and have since been appended to the Recovery Plan and incorporated into the Strategy (U.S. Fish and Wildlife Service 2007, p. 39–43). Importantly, these habitat-based recovery criteria have not changed significantly since being drafted and being made available for public comment in 1999. The Strategy ensures they will continue to be met in the foreseeable future. Our proposed rule and this final rule utilized the habitat-based recovery criteria, as well as all other pertinent recovery criteria, when addressing the 5 factors set forth in section 4(a)(1) of the Act.

Issue 2—Some commenters noted that we cannot claim that the demographic recovery goals have been met because the goals cited have been found inadequate by the courts.

Response—The demographic recovery goals have not been found inadequate by the courts. The court opinion (*Fund for Animals* v. *Babbitt*, p. 30) stated, ''Based on the record the court does not find that the defendant's designation of population targets is arbitrary and capricious.'' The court directed us to ''reconsider the available evidence and its decision to adopt the population monitoring methodology that it has incorporated into the Grizzly Bear Recovery Plan.'' We did so in a formal response to public comments regarding the supplemental information (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*) and found these methods were the best available methods when the Recovery Plan was written in 1993. In order to apply the best available methods at the time of proposing delisting, we worked with the U.S. Geological Survey and the Study Team to begin the process detailed in the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2005, pp. 12–41) to consider and apply newer science to the issues of population monitoring and the establishment of sustainable mortality. This effort has resulted in the improved methods appended to the Recovery Plan and incorporated into the Strategy.

E. Significant Portion of Range

Issue 1—Many commenters expressed dissenting views and interpretations of the Act's phrase ''significant portion of its range'' as it is used to define a threatened species, or in this case, a recovered species. Some stated that range does or should mean historical range, thereby obligating us to recover species across a significant portion of their historical range to be considered recovered. Some commenters disagreed with our definition of range and said that it was the same as the court-invalidated wolf rule (68 FR 15804, April 1, 2003), which stated that range, when defined as ''the area within the DPS boundaries where viable populations of the species now exist,'' was circular because if we define range as where grizzlies currently are and then conclude that they are therefore recovered within a significant portion of that range, this would have meant they were recovered in 1975. Several commenters noted that we must explain why the Yellowstone grizzly bear is no longer threatened by the loss of its historical range.

Response—A species may be delisted according to 50 CFR 424.11(d) if the best scientific and commercial data available demonstrate that the threats to that species, as described in section 4(a)(1), have been removed such that it is neither endangered nor threatened. The Act defines an ''endangered species'' as one that ''is in danger of extinction throughout all or a significant portion of its range.'' A ''threatened species'' is one that ''is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.'' One consideration in deciding whether a species meets either of these definitions is the interpretation of ''significant portion of its range.''

For a detailed discussion of ''range'' under the Act, see the Summary of Factors Affecting the Species portion of this rule below. That said, historical range is only relevant to the discussion of ''significant portion of the range'' to the extent that it may offer evidence whether a species in its current range is likely to become endangered in the foreseeable future. In such situations, historical range is considered in the listing factor section 4(a)(1) analysis.

Our 5-factor analysis was conducted over the entire current and foreseeable range of the grizzly bear including all ''suitable habitat'' within the DPS (defined and discussed under Factor A below). While grizzly bears once occurred throughout the area of the Yellowstone DPS (Stebler 1972, pp. 297–299), records indicate that even in the early 19th century, grizzly bears were less common in these eastern prairie habitats than in mountainous areas to the west and south (Rollins 1935, p. 191; Wade 1947, p. 444). Today, these habitats are no longer biologically suitable for grizzly bears as they lack adequate food resources (i.e., bison). These unsuitable areas are not relevant to the current or foreseeable status of the Yellowstone DPS. The current range of the DPS supports a population of adequate quantity and distribution to ensure a recovered population into the foreseeable future. And, additional unoccupied suitable habitat will provide opportunities for continued population growth. Finally, as discussed below, a lack of occupancy of all historic habitat within the DPS will not impact whether this population is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Issue 2—One commenter noted that because grizzly bears experience negative growth rates outside the PCA, they are in danger in this portion of their range. The commenter believes that the area outside the PCA constitutes a significant portion of their range because we include all grizzly bears and the lands they currently occupy to make the statement that they are recovered within a significant portion of their range.

Response—We agree that the suitable habitat outside the PCA represents a significant portion of the range, albeit less significant than suitable habitat within the PCA. See the Significant Portion of Range discussion under Factor A below for a more detailed discussion of this issue. That said, grizzly bears are not in ''danger'' in areas outside the PCA. The Yellowstone grizzly population is a single population with mortalities counted in all areas inside the Conservation Strategy Management Area (Figure 1) and sustainable mortality limits established for the entire population. The overall population growth rate will be managed for a stable to increasing population as per the methods and direction in the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2005, pp. 5–11). Although the population may experience negative growth rates in some areas, this is not biologically significant. It would be inappropriate to suggest one ''segment'' is declining, while another ''segment'' is increasing because the population is contiguous and is considered as a whole entity per our DPS analysis above. The overall trajectory of the population will remain stable to increasing.

F. DPS Policy

Issue 1—Some commenters believe that the DPS policy is to be used only in listing decisions and that using it in a delisting decision violates Congressional intent and the legislative and statutory structure of the Act.

Response—We disagree with this interpretation of the DPS policy. The

Act, its implementing regulations, and our DPS policy provide no support for this interpretation. Section 4(a)(1) of the Act directs the Secretary of the Interior to determine whether ''any species'' is endangered or threatened. Numerous sections of the Act refer to adding and removing ''species'' from the list of threatened or endangered plants and animals. Section 3(15) defines ''species'' to include any subspecies ''and any distinct population segment of any species of vertebrate fish or wildlife * * * .'' The Act directs us to list, reclassify, and delist species, subspecies, and DPSs of vertebrate species. It contains no provisions requiring, or even allowing, DPSs to be treated in a different manner than species or subspecies when carrying out the listing, recovery, and delisting functions mandated by section 4. Furthermore, our DPS Policy states that the policy is intended for ''the purposes of listing, delisting, and reclassifying species under the Act'' (61 FR 4722, February 7, 1996), and that it ''guides the evaluation of distinct vertebrate population segments for the purposes of listing, delisting, and reclassifying under the Act'' (61 FR 4725, February 7, 1996).

The comment also overlooks the untenable situation that would arise if DPSs could be listed but could never be delisted after they have been successfully recovered. Clearly Congress did not envision such an outcome when amending the definition of species to include vertebrate DPSs.

Issue 2—A commenter noted that the DPS analysis in the proposed rule created a remnant population, contrary to a court decision. They stated that the Act allows us to ''consider listing only an *entire* species, subspecies, or DPS'' (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154, 1162 (D. Or. 2001)); therefore, we cannot declare part of a listed subspecies a DPS without also designating the remaining listed subspecies as DPS(s). This commenter suggests that we reconsider the status of all other lower 48 grizzly bear populations simultaneously and should not delist the GYA population until we uplist all other populations in the Lower 48 States.

Response—While in some situations it may be appropriate to designate multiple DPSs simultaneously, the lack of such a requirement provides useful flexibility, allowing the Service to subsequently list or delist additional DPSs when additional information becomes available or as the conservation status of the taxon changes. Importantly, courts have upheld this flexibility. In *National Wildlife Federation* v. *Norton* (1:03–CV–340, D. VT. 2005, p. 20), the court found that ''Nowhere in the Act is the Secretary prevented from creating a 'non-DPS remnant' designation, especially when the remnant area was already listed'' * * *. Our current designation of a Yellowstone DPS, while retaining the remaining lower 48 State grizzly bear listing intact as threatened, is consistent with this aspect of the District Court's ruling.

Furthermore, just as the Yellowstone DPS is discrete from the remaining populations in the lower 48 States, the remaining populations are discrete from the Yellowstone DPS. The amended lower 48 State listing is discrete from Canadian populations of *Ursus arctos horribilis* as delineated by the United States/Canadian international boundary with significant differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms. The amended lower 48 State listing is significant in that the loss of the lower 48 State population would result in a significant gap in the range of the taxon (*U. a. horribilis*). Therefore, the amended lower 48 State listing is discrete and significant.

Additional analysis is required to determine if the amended lower 48 State listing warrants further splitting into additional DPSs. For now, the warranted-but-precluded findings for uplisting (from threatened to endangered) the Selkirk, the North Cascades, and the Cabinet-Yaak populations remain precluded by higher priority actions (71 FR 53755, 53835, September 12, 2006). While these warranted-but-precluded findings are reviewed annually, we intend to review the status of the entire amended lower 48 State listing that results from this final rule in an upcoming 5-year review, as per section 4(c)(2)(A) of the Act.

Issue 3—One commenter recommended that the Service use evolutionary divergence (Hall's subspecies) to designate DPSs across their historical range and that these should replace or supplement the current recovery zones.

Response—The subspecies approach identified by Hall (1984, pp. 2–11) suggested seven different North American grizzly bear subspecies and is not in accordance with accepted scientific taxonomic literature and approaches. We accept the holarctic species concept and North American subspecies designations established by the works of Couterier (1954, p. 5), Rausch (1953, pp. 95–107; 1963, p. 43), and Kurten (1968, p. 127–128). This literature establishes one single holarctic species (*Ursus arctos*) and two North American subspecies, *U. a. horribilis* and *U. a. middendorfi*. *U. a. horribilis* is the subspecies that occurs in North America outside of Kodiak Island, Alaska. Therefore, the current recovery zones consider recovery in light of this taxonomy.

Issue 4—Some commenters noted that we violated the DPS policy because we failed to consider the effect of delisting the Yellowstone DPS on rangewide recovery of the species, especially in the Bitterroot Ecosystem, which is currently unoccupied by grizzly bears but considered vital to the metapopulation dynamics of grizzlies in the Lower 48 States.

Response—The DPS policy was carefully followed in designating the Yellowstone DPS. The delisting of the Yellowstone DPS will not have detrimental impacts on grizzly bear recovery actions in other recovery zones, as the grizzly bears in these areas remain threatened under the Act. As such, coordinated recovery efforts will continue in these areas.

Issue 5—Several commenters disagreed with the delineation of the boundaries for the Yellowstone DPS. Some believe that because the boundaries were mainly highways, they were arbitrary and not based on sound biological principles. Others believe that the DPS should be expanded to the north to allow for more dispersal because, currently, suitable habitat on the northern edge extends nearly to the DPS boundary. Others believe that the DPS boundaries should include the entire State of Wyoming to lessen confusion and allow for management by the State of Wyoming if bears disperse south of Interstate 80.

Response—As noted in the proposed rule, an artificial or manmade boundary (such as Interstate, Federal, and State highways) may be used as a boundary of convenience in order to clearly identify the geographic area included within a DPS designation. The Yellowstone DPS boundaries were defined along easily identifiable boundaries and included the entire recovery zone, the primary conservation area, the conservation strategy management area, all suitable habitat within the GYA based on biological information, and all occupied habitat. We believe this represents the most appropriate DPS for this population. Expansion of the DPS boundaries is not necessary to maintain a recovered grizzly bear population and is not justified biologically, given the limited dispersal capabilities of grizzly bears.

Issue 6—Some commenters pointed out that it would be confusing for State and Federal managers to have a grizzly bear roam outside of the boundaries, for

instance west of Interstate 15, and then be considered a threatened species. To address this confusion, some commenters believe that any grizzly bear originating from the Yellowstone DPS should be considered part of that DPS, regardless of where they are geographically.

Response—A DPS is a geographic designation determining the listed status for all individuals of said species in that area. Bears outside the DPS area, no matter their origin, are listed as threatened under the Act. The State and Federal agencies are aware of and understand the management implications of the DPS boundaries. We used easily identifiable boundaries such as the center line of major highways to minimize management confusion. If a grizzly bear goes beyond the Yellowstone DPS boundaries, it would become a threatened grizzly bear. Similarly, if a grizzly bear from another population enters the Yellowstone DPS boundaries, it would be managed according to the Strategy and State management plans.

Issue 7—One commenter stated that the DPS designation would preclude augmentation because it would destroy the genetic uniqueness of the DPS.

Response—Designation of the DPS would not preclude future augmentation, if we determine augmentation to be necessary to maintain genetic fitness. The DPS Policy does not require complete separation of one DPS from other populations, but instead requires ''marked separation.'' As stated in the 1993 Grizzly Bear Recovery Plan, natural connectivity is important to long-term grizzly bear conservation, and we will continue efforts to work toward this goal (whether accomplished naturally or through augmentation) independent of the delisting of the Yellowstone DPS (U.S. Fish and Wildlife Service 1993, p. 53). Thus, if occasional individual grizzly bears disperse among populations or are moved intentionally, the Yellowstone grizzly bear DPS would still display the required level of discreteness, per the DPS Policy. Gene flow through either linkage or augmentation is discussed further under Factor E below.

Issue 8—One commenter stated that he could not find the ''genetic monitoring information'' to be appended to the Recovery Plan.

Response—This document was made available for public review and comment in 1997 (62 FR 47677, September 10, 1997) and noticed again in 1999 (64 FR 38465, July 16, 1999). As noted in the proposed rule, the document also was posted on our website for the Yellowstone grizzly bear population (*http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). This document does not describe recovery criteria, as current levels of genetic diversity are consistent with known historic levels and do not threaten the long-term viability of the species, and instead proposes a post-delisting monitoring strategy to ensure that necessary levels of gene flow occur so that this population retains its recovered status for the foreseeable future. This 1999 information was never formally appended to the 1993 Recovery Plan. Due to the continuous and rapid evolution of the genetics field, this information no longer reflects the most up-to-date and scientifically sound approach. Therefore, we have determined that it is no longer appropriate to append the 1999 genetic monitoring methods and management responses to the Recovery Plan. Instead, a new genetic monitoring approach which reflects the most recent, best available science will be applied to the future management of the Yellowstone grizzly bear DPS as described in the Strategy's updating process (U.S. Fish and Wildlife Service 2007, p. 63). The Coordinating Committee will commence this genetic monitoring information updating process, which will include a public comment process, within 6 months of this final rule becoming effective.

G. Definition of Suitable Habitat

Issue 1—Several commenters requested that we explain why lands excluded from our definition of suitable habitat or the State's definitions do not constitute a significant portion of the grizzly bears' range.

Response—None of these unsuitable areas, either individually or collectively, are capable of contributing, in a meaningful way, to the overall status of the Yellowstone DPS. Therefore, these unsuitable areas do not represent a significant portion of the Yellowstone DPS range because their exclusion will not influence population trajectory or population health. Suitable habitat inside the PCA, which contains 84 to 90 percent of the population of females with cubs (Schwartz *et al.* 2006b, p. 64), the most important age and sex group to population trajectory, will be protected by the habitat standards in the Strategy. Grizzly bears also will be allowed to expand into currently unoccupied suitable habitat as per the State plans. Outside the PCA, 60 percent of suitable habitat is protected by its status as Designated Wilderness, Wilderness Study Area, or Inventoried Roadless Area. Areas outside of suitable habitat will not affect the trajectory or health of the Yellowstone population now or in the future. A lack of occupancy of historic habitat will not impact whether this population is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Issue 2—Several commenters believe that the decision to exclude sheep allotments as suitable habitat was based upon social considerations rather than biology. Instead, they stated that ''* * * mortality rates in these areas are not a function of the habitat itself, but of land-use decisions'' and that the habitat could be made suitable by regulatory mechanisms. One commenter suggested that the Service be upfront and clear that the definition of suitable habitat ''* * * is not based solely on an evaluation of the grizzly bear's resource needs.'' Another commenter requested that we prepare an analysis of what proportions of their lives individual grizzlies spend in ''suitable'' versus ''unsuitable'' habitat.

Response—Our determination that sheep allotments were not suitable for grizzly bears was based on mortality rates, which is a biological issue. In areas of high conflict potential such as campgrounds, management actions are taken to limit grizzly bear presence or use. The sheep allotments outside suitable habitat are not necessary to ensure that this population avoids becoming threatened within all or a significant portion of its range in the foreseeable future. Because of the habitat protections inside the PCA and the large percentage of suitable habitat outside the PCA (60 percent) that is currently a Designated Wilderness Area (6,799 sq km/4,225 sq mi), Wilderness Study Area (708 sq km/440 sq mi), or Inventoried Roadless Area (6,179 sq km/3,839 sq mi), the long-term persistence of the Yellowstone grizzly bear population is assured without the sheep allotments.

Our definition of suitable habitat reflects the best available science and is adequate to ensure that the Yellowstone grizzly bear population is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The three criteria we used to define suitable habitat in the proposed rule are—(1) being of adequate habitat quality and quantity to support grizzly bear reproduction and survival (i.e., within the Middle Rockies ecoregion—please see discussion below in Suitable Habitat section under Factor A); (2) contiguous with the current distribution of Yellowstone grizzly bears such that

natural re-colonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear mortality. Upon the request of one peer reviewer and in response to this issue, we undertook additional analyses to examine how much suitable habitat would exist in the GYA under different definitions of suitable habitat.

If grizzly bears were given priority over all other land uses, we found that an additional 13,837 sq km (5,342 sq mi) of habitat exists that meets the first two criteria for our definition of suitable habitat (found within the Middle Rockies ecoregion and contiguous with the current population distribution). Of that ''potentially'' suitable habitat, nearly 16 percent (2,184 sq km (843 sq mi)) is privately owned. The remaining habitat is 70 percent National Forest (9,637 sq km (3,720 sq mi)), 8.5 percent BLM (1,171 sq km (452 sq mi)), 4 percent State-owned (545 sq km (211 sq mi)), and less than 2 percent in other Federal ownerships (200 sq km/77 sq mi).

Although management direction could change on these Federal and State-owned lands to favor grizzly bears by eliminating all other uses (e.g., livestock grazing allotments, oil and gas development), this action is not biologically necessary to maintain the recovered status of the Yellowstone grizzly bear. These areas do not constitute a significant portion of the range. If this habitat became biologically necessary in the future due to decreases in habitat quality or excessive mortality, the adaptive management approach described in the Strategy would allow managers to modify the management within what is currently ''potentially'' suitable habitat on public lands.

When we examine all areas found within the DPS boundaries that are within the Middle Rockies ecoregion and do not consider whether these areas are contiguous with the current grizzly bear population, an additional 7,178 sq km (2,771 sq mi) of habitat meets this sole criterion. Of this ''potentially suitable'' habitat that is not contiguous with the current distribution of grizzly bears, 6,341 sq km (2,448 sq mi) is contained within the Bighorn Mountains and 837 sq km (323 sq mi) within the Pryor Mountains on the Wyoming and Montana border. Distances between these mountain ranges, the current distribution of grizzly bears, and land uses in the intervening habitat will preclude dispersal of most males and most, if not all, females. Without constant emigrants from suitable habitat, it is highly unlikely that the Bighorns or the Pryor Mountains can support a self-sustaining grizzly bear population. Again, this ''potentially suitable'' habitat is not biologically necessary to maintain the recovered status of the Yellowstone grizzly bear DPS.

We have determined that an analysis examining the proportion of time grizzly bears spend in suitable and unsuitable habitats is unnecessary. Although this information may be useful when modeling source-sink dynamics, the sustainable mortality limits that have been established for the entire population ensure that mortality will not exceed recruitment. The Study Team will continue to monitor habitat use by radio-collared grizzly bears post-delisting and attempt to quantify why and where grizzly bears experience different mortality rates.

Issue 3—Some commenters noted that we considered more than strictly biological criteria in the recovery process when we introduced the term ''socially acceptable'' in the Strategy.

Response—The presence of grizzly bears in places with high levels of human activity and human occupancy results in biological impacts to grizzly bears in terms of increased mortality risk and displacement. The level of this impact is directly related to the location and numbers of humans, their activities, and their attitudes and beliefs about grizzly bears. The consideration of human activities is fundamental to the management of grizzly bears and their habitat.

Issue 4—Many commenters questioned whether the 1998 baseline applied exclusively inside the PCA was adequate to ensure the continued viability of the Yellowstone DPS. They noted that in 1998, the population was already occupying a large area outside of the recovery zone and, therefore, to conclude that habitat conditions inside the PCA are what contributed to the observed 4 to 7 percent population growth is to portray an incomplete picture of what occurred. Many commenters believed all currently occupied habitat should be protected since it has contributed to the growth of the population. Many commenters suggested that protections must be extended to all suitable habitat to ensure long-term viability of the Yellowstone DPS. One commenter recommended that we employ a reserve design approach with the PCA designated as the protected core of the GYA Reserve (with no hunting) and the rest of the GYA managed as a buffer zone (with all protections currently provided in the PCA being extended to the entire GYA). One commenter also noted that we must have data on habitat conditions outside of the PCA to draw a conclusion about future risks and habitat changes there.

Response—The Service has applied a reserve design approach by designating the PCA. The PCA, which is a subset of the suitable habitat, contains between 84 to 90 percent of the females with cubs (the population's most important age and sex group) (Schwartz *et al.* 2006b, p. 64). The population has been growing at 4 to 7 percent per year since the 1990s (Harris *et al.* 2006, p. 48), with most of the growth occurring inside the PCA (Schwartz *et al.* 2006b, p. 64). The best available information demonstrates that the PCA contains the habitat necessary for a healthy and viable grizzly bear population in the long-term. Strict habitat protection within the PCA is guaranteed to assure the future of the population. Sixty percent of suitable habitat outside the PCA is Designated Wilderness, Wilderness Study Area, or Inventoried Roadless Area. This amount of protected habitat combined with the GYA National Forests' commitment to manage habitat for a viable grizzly bear population, forest-wide food storage orders, and designation of the grizzly bear as a species-of-concern on GYA National Forests, gives the Service reasonable assurance that grizzly bears outside of the PCA will continue to be protected adequately. In addition, allowable hunting mortalities will be determined and limited by the total sustainable mortality limit.

H. Habitat Protections

Issue 1—Some commenters questioned the adequacy of the habitat protections that we developed for the PCA and advocated more meaningful habitat protections including baseline values for major foods, restrictions on private land development, and limits on both motorized and non-motorized recreation.

Response—Our habitat protection criteria are adequate and biologically sound. There is no biological way to define ''baseline'' levels for various foods because the natural foods for grizzly bears naturally fluctuate, annually and spatially, across the ecosystem. Instead of establishing artificial baseline values for major grizzly bear foods, the protocol in place for the monitoring of major foods will provide annual indices of the variation of these foods, and will compare changes in these foods to grizzly bear vital rates such as mortality causes and locations, cub production and survival, adult female survival, and numbers and distribution of bear/human conflicts. The results will guide adaptive management responses to changes in foods such as enhanced Information and

Education (I & E) efforts, limiting grizzly bear mortality, planting whitebark pine, controlling exotic species, and/or prescribed burning.

Private lands comprise 2.1 percent of the PCA. Limits on developing private lands to reduce conflicts with resident wildlife are the responsibility of the counties and the States. County representatives are members of the Coordinating Committee and will insure that efforts to limit conflicts on private lands will continue. Their cooperation with the State wildlife agencies to promote outreach, education and management of land development activities in grizzly habitat to reduce bear/human conflicts will continue upon delisting. These efforts to limit conflicts on private lands will continue under the Coordinating Committee's management.

Limiting motorized recreation is a fundamental component of the Strategy, hence the requirement for no net decrease in secure habitat inside the PCA. This measure directly limits the total area impacted by motorized recreation, so that grizzly bears have adequate secure habitat regardless of the number of people using motorized trails. Limitation of non-motorized recreation throughout the GYA is not currently necessary, as evidenced by the increasing grizzly bear population since the 1980's (Harris *et al.* 2006, p. 48). The adaptive management approach in the Strategy will allow managers to respond to detrimental levels of non-motorized recreation on a case-by-case basis and also provide managers with the data necessary to determine if ecosystem-wide limitations may be necessary in the future.

Issue 2—Numerous comments stated that grizzly bears must be allowed access to habitat in the Southern Wind Rivers, Palisades, and Wyoming Range so that they can find food in light of declining food sources. These areas are currently deemed as socially unacceptable habitat by the Idaho and Wyoming State management plans. Many commenters thought that the States should throw out their concept of ''socially acceptable'' areas and should, instead, encourage colonization of all biologically suitable habitat while improving efforts to manage conflicts in those areas.

Response—The Idaho Plan does not limit or restrict bears in the Palisades. The Idaho Plan acknowledges this area as one of many outside the PCA where grizzly bear occupancy is anticipated in the next 5 to 10 years (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 8–9). The Wyoming Plan calls for management emphasis to limit conflicts in the southern Wind River and the Wyoming Ranges by discouraging grizzly bear dispersal and occupancy of these areas. The Wyoming Grizzly Bear Management Plan (WGFD 2005, pp. 12–16) does not exclude grizzlies from the southern Wind Rivers; rather, it recognizes a higher potential for grizzly bear/human conflicts if they move into areas such as the southern Wind River or Wyoming Mountain ranges. The presence of grizzly bears in places where there are high levels of human activity and occupancy results in biological impacts to grizzly bears in terms of increased mortality risk and displacement. Consideration of these potential biological impacts was a critical element in the determination of suitable habitat. As the grizzly population increases in area and density, an emphasis will be placed on education, conflict prevention, relocation, or removal of bears to limit conflicts. Because there have been few if any bears in these areas for many decades and the population has continued to grow during this time, these areas are presently not necessary to include in the PCA.

Issue 3—Commenters requested that we consider potential changes in management of Inventoried Roadless Areas resulting from the 2005 Roadless Areas Rule (70 FR 25654) under which management decisions will be made based on State Governor's petitions and individual Forest Plans. Some thought we should undertake a more detailed analysis of ''* * * roadless areas that are specifically threatened [and] identify which formerly-protected areas are especially important to present and future grizzly bear conservation.''

Response—The State Petitions for Inventoried Roadless Area Management Rule (70 FR 25654, May 13, 2005) that replaced the Roadless Area Conservation Rule (''Roadless Rule'') (66 FR 3244, January 12, 2001) was overturned September 19, 2006 (*People of the State of California ex rel. Bill Lockyer, et al.* v. *U.S. Department of Agriculture; Mike Johanns, Secretary of the Department of Agriculture, et al.*, C05–03508 EDL). The State Petitions for Inventoried Roadless Area Management Rule was set aside and the 2001 Roadless Rule was reinstated. The USDA Forest Service was enjoined from taking any further action contrary to the 2001 Roadless Rule without undertaking environmental analysis consistent with the court opinion. Because this court decision voided the State Petitions for Inventoried Roadless Area Management Rule, the 2005 Roadless Areas Rule has no impacts. Even if the State Petitions for Inventoried Roadless Area Management Rule is sustained in a possible appeal of the September 19, 2006, court decision, the majority of roadless areas are likely to remain undeveloped. The six GYA National Forests are committed to managing for a viable grizzly bear population. If any roads are proposed to be built in roadless areas, the USDA Forest Service must first complete a formal National Environmental Policy Act of 1969 (NEPA) process and specifically consider the project's impacts on species of concern, which the Yellowstone grizzly bear population will be classified as post-delisting (USDA Forest Service 2006b, p. 26). State Petitions for Inventoried Roadless Area Management only allow the Governors to comment on the Forest Service process of considering management of Inventoried Roadless Areas and do not provide the Governors any authority to make decisions on road building. Any comments from the Governors would be considered during the EIS process.

Issue 4—Several commenters suggested that we provide habitat protections for identified linkage zones between the GYA and other occupied and unoccupied grizzly bear habitat to the north and west.

Response—A process to identify, maintain, and improve wildlife movement areas between the large blocks of public land in the Northern Rocky Mountains is ongoing (Servheen *et al.* 2003, p. 3). This interagency effort involves 13 State and Federal agencies working on linkage facilitation across private lands, public lands, and highways (Interagency Grizzly Bear Committee 2001, pp. 1–2). To date, this effort has included: (1) Development of a written protocol and guidance document on how to implement linkage zone management on public lands (Public Land Linkage Taskforce 2004, pp. 3–5); (2) production of several private land linkage management documents, including ''Making Connections from the Perspective of Local People'' (Parker and Parker 2002, p. 2), and the Swan Conservation Agreement (U.S. Fish and Wildlife Service 1997), which is a collaborative linkage zone management document; (3) analyses of linkage zone management in relation to highways, including identification of multiple linkage areas in southeast Idaho from Idaho Falls to Lost Trail Pass (Geodata Services Inc. 2005, p. 2) and the effects of highways on wildlife (Waller and Servheen 2005, p. 998); and (4) a workshop in the spring of 2006 on implementing management actions for wildlife linkage, the proceedings of which are available

online at: *www.cfc.umt.edu/linkage.* The objective of this work is to maintain and enhance movement opportunities for all wildlife species across the northern Rockies. This linkage work is not directly associated with the Yellowstone grizzly population and will continue to address ways to improve cooperation and affect management on public lands, private lands, and highways in linkage areas across the northern Rockies regardless of the listed status of the Yellowstone grizzly bear DPS.

Issue 5—Numerous commenters believed that resource extraction industries would dominate the landscape if delisting occurred. Some stated that the overall trend for habitat quality has been declining, at least in part, due to high-density oil and gas development. Some commenters believe that we did not fully evaluate or acknowledge the potential impacts from oil and gas development or increased logging in the GYA on the grizzly bear population. One commenter noted that, although there are large areas of land in the GYA that are not open to surface occupancy, such stipulations are routinely waived upon request and do not adequately address concerns of ''full field development'' that may occur in grizzly bear habitat.

Response—Service-defined suitable habitat inside or outside the PCA (see Figure 1 above) does not contain active oil or gas wells. Timber is the primary resource extracted in grizzly bear habitat. Habitat quality (as a function of road density and timber harvest) has improved as a result of declining timber harvest and road construction and increasing road decommissioning since the mid-1990s (USDA Forest Service 2006a, pp. 156, 200).

Inside the PCA, the potential for increased oil and gas development in the future is guided by the Strategy and its limitations on road density and development (U.S. Fish and Wildlife Service 2007, p. 41). We do not anticipate a dramatic increase in oil and gas development outside of the PCA due to moderate to low potentials for both occurrence and development throughout most of the six GYA National Forests, with the exception of the Bridger-Teton National Forest (USDA Forest Service 2006a, pp. 210–213). Even with the high potential for occurrence and development in the Bridger-Teton, only 14 active oil and gas wells are currently inside that National Forest and none are within Service-defined suitable grizzly habitat.

Issue 6—Many commenters were concerned about the rapid human population growth in the GYA and the resulting increases in houses, recreationists, and grizzly bear/human conflicts. Some commenters suggested that overall habitat quality in the GYA had already declined, and would continue to do so, primarily due to houses and off-highway-vehicle (OHV) use. Commenters believe that we must ensure future human population growth does not affect the grizzly bear population and recommended that we quantify current levels of use in the GYA for consideration in a risk assessment. They also recommended we develop a comprehensive monitoring, management, and enforcement plan for OHV and snowmobile use in the GYA before considering delisting.

Response—Human populations in the GYA, and the rest of the United States, are expected to increase (USDA Forest Service 2006a, p. 229). In the six Wyoming counties where grizzly bears are, or are expected to be, in the next few decades, the human population is projected to increase by roughly 15,000 residents between 2000 and 2020 (from 105,215 in 2000 to 120,771 by 2020) (Wyoming Department of Administration and Information Economic Analysis Division 2005). In the Montana counties of Gallatin, Madison, Beaverhead, Park, Sweet Grass, Stillwater, and Carbon, total populations are expected to increase by roughly 35,000 people during this same time (from 120,934 in 2000 to 154,800 by 2020) (NPA Data Services 2002). We anticipate similar levels of population growth in the Idaho counties of the GYA given that the West, as a region, is projected to increase at rates faster than any other region (U.S. Census Bureau Population Division 2005). Increasing human populations do not necessarily lead to declining predator populations, when adequate management programs are in place with policies that promote the conservation of the species (Linnell *et al.* 2001, p. 348) such as mortality control, research and monitoring, and outreach and education about living with wildlife.

Recent reports (Gosnell *et al.* 2006, pp. 749–750) demonstrate that the majority of land sales over 162 ha (400 ac) in size in the greater Yellowstone ecosystem from 1990 to 2001 were to amenity buyers (39 percent) (those who purchase for ambiance or recreation and who have little interest in the economic viability of the property), or to traditional ranchers (26 percent). Less than 6 percent of 605,814 ha (1.497 million ac) sold from 1990 to 2001 were to land developers, and 12 percent were to investors whose ultimate intention was unknown. This report suggests that ongoing changes in land ownership may result in reduced conflicts between livestock and predators, and a lowered level of land development sales than previously projected. While there may be conservation benefits in this overall land ownership change, there are uncertainties as to the eventual land uses on these properties.

The Service has no authority to limit or manage future human population growth. Current levels of human use of public lands are quantified (USDA Forest Service 2006a, pp. 180–185) and managed to limit resource impacts in the management plans of the National Forests and the National Parks in the Yellowstone ecosystem. A modeling exercise to further predict the impacts of future population growth on the Yellowstone grizzly bear DPS would be of minimal use due to multiple uncertainties regarding assumptions about human behavior and how humans will react to grizzly bears. As human populations and recreational activity have increased in the GYA National Forests, additional regulations have been implemented to limit bear/human conflicts such as the food storage orders in all suitable habitat on National Forest lands and comprehensive State and Federal I & E programs that explain how to coexist with bears. These efforts will continue upon delisting so that the potential negative impacts of increasing human populations on the Yellowstone grizzly bear DPS are adequately mitigated.

Under the Strategy, designated motorized access routes will not be increased inside the PCA, and OHV use is restricted to designated motorized access routes. The USDA Forest Service Final EIS on the Forest Plan Amendment for Grizzly Bear Habitat Conservation for The Greater Yellowstone Area National Forests (USDA Forest Service 2006a, p. 192) states that, ''It is likely that revised plans will revise, and possibly limit motorized access to address wildlife security needs, better manage conflicting recreation uses, and protect areas from resource damages.'' Quantification and management of OHV use and snowmachine use on public lands are presented in the management plans of the National Forests and the National Parks in the GYA. Any detrimental impacts on grizzly bear habitat use and/or mortality will be monitored as part of the comprehensive monitoring systems in the Strategy.

Issue 7—Many commenters were concerned that declines in all four of the major foods that Yellowstone grizzlies rely upon will decrease the carrying capacity of the GYA, with resulting negative effects on long-term grizzly bear population viability. The

commenters stated that the proposed rule was too optimistic regarding grizzly bear response to decreases in major foods and noted that the alternative foods for grizzly bears in the GYA are not of the same quality and quantity found as the four major foods grizzlies currently use.

Response—The amounts of major foods for grizzly bears will likely fluctuate due to possible changes in average temperature, precipitation, forest fires, introduced species, and resident insects. Changes in environmental conditions and resulting changes in foods for grizzly bears have been recognized by management agencies throughout the recovery process. That such changes will occur is neither exceptional nor unexpected. The key issue is determining how management agencies will quantify and respond to such changes. Presently, a system has been implemented to monitor changes in the production and distribution of foods in relation to grizzly bear vital rates (U.S. Fish and Wildlife Service 2007, pp. 25–60). The Study Team will report the monitoring results on food production, extent and impact of insect and disease on food production, bear mortality, reproductive success, and age-specific survival annually to the Coordinating Committee. The relationships between these factors will detect any impacts of changes in foods on bear viability in the ecosystem and will be the basis for an adaptive management response by the Coordinating Committee.

Issue 8—Some private landowners in the GYA were concerned about the direction given in the Strategy that encourages citizens to become involved in private land issues and questioned what authority we have to make such a recommendation.

Response—We have no direct authority over private lands nor can we require private citizen actions. Instead, the Strategy put forward voluntary recommendations. The consideration of private land activities on grizzly/human conflicts is fundamental to the proper management of grizzly bears and to human safety because a disproportionate number of grizzly bear/human conflicts occur at site developments on private lands (Servheen *et al.* 2004, p. 15).

Issue 9—Some commenters were concerned about the amount of denning habitat both inside and outside of the PCA that will be open to snowmachine use.

Response—The Forest Plan Amendment includes guidance that inside the PCA, localized area restrictions are to be used to mitigate conflicts, where conflicts occur during denning or after bear emergence in the spring. Much of the grizzly bear denning habitat identified in the Forest Plan Amendment Final EIS as being open to snowmobiling is not actually used by snowmachines (USDA Forest Service 2006a, p. 92). Bears tend to den in remote areas with characteristics that are not conducive to snowmachining (i.e., steep, forested habitats). Eighty-eight percent of the known dens in the Yellowstone ecosystem are located in areas where snowmachine use does not occur (USDA Forest Service 2006a, p. 92).

Suitable denning habitat is well distributed on the forests. Five of the six GYA National Forests consulted with us in 2001 regarding the effect of snowmachines on denning grizzly bears. Our best information suggests that current levels of snowmachine use are not appreciably reducing the survival or recovery of grizzly bears. While the potential for disturbance exists, USDA Forest Service and Study Team monitoring over the last three years has not documented any disturbance (Gallatin National Forest 2006, p. D–68). Monitoring will continue to support adaptive management decisions to limit snowmachine use in areas where disturbance is documented or likely to occur.

I. 1998 Baseline for Secure Habitat, Developed Sites, and Livestock Allotments

Issue 1—Many comments questioned the logic and supporting evidence for using 1998 as the baseline year. Some commenters said that the 1998 baseline was chosen arbitrarily and that the Service did not analyze the implications of selecting any other particular year within the time of 4 to 7 percent population increase (1983–2001).

Response—The year 1998 was chosen because secure habitat and site developments had been roughly the same during the previous ten years (USDA Forest Service 2004, p. 27) and the population was increasing during these years (Eberhardt and Knight 1996, p. 419; Harris *et al.* 2006, p. 48). The selection of any other year between 1988 and 1998 would have resulted in approximately the same baseline values for roads and developed sites. We did not select baseline habitat values from years before 1988 because habitat improvements that occurred after the implementation of the Interagency Grizzly Bear Committee Guidelines (USDA Forest Service 1986, pp. 6–21) would not have been reflected.

Issue 2—Several commenters said that the 1998 baseline did not adequately consider alternative hypotheses and processes that may have lead to positive growth rates for the grizzly population from 1983–2001 (e.g., good whitebark pine years in the early 1990s), and that it is overly simplistic to assume that levels of secure habitat, developed sites, and livestock allotments are adequate to explain the observed population growth.

Response—Numerous studies have confirmed that secure habitat, developed sites, and livestock allotments affect grizzly bear survival on a landscape scale (Mattson *et al.* 1987, p. 271; Mace *et al.* 1996, pp. 1402–1403; Servheen *et al.* 2004, p. 20). We used these variables as surrogates for habitat effectiveness because the annual variability in the abundance and distribution of major foods precludes the Service from establishing baseline values for them.

We believe that high whitebark pine cone production in the early 1990s does not adequately explain the observed population growth during this time (Haroldson *et al.* 2006b, p. 41). The Annual Study Team reports document that the early 1990s were not particularly good whitebark pine production years as evidenced by average counts of less than 20 cones per tree from 1990 through 1995. In fact, the only 2 years during the 1990s with cone counts above 20 cones per tree were 1996 and 1999 (Haroldson and Podruzny 2006, p. 45). We also note that the Yellowstone grizzly bear population was declining in the 1960s and 1970s, regardless of whitebark pine production. Declines continued until management intervention occurred with the implementation of the Guidelines (USDA Forest Service 1986, pp. 6–21) by the affected National Parks and Forests. These Guidelines (USDA Forest Service 1986, pp. 6–21) focused on improving habitat quality and limiting human-caused mortality resulting from grizzly bear/human conflicts. Because of the subsequent success of the Yellowstone grizzly bear population in the decades following implementation of the Guidelines, it is reasonable to infer that the Guidelines played a significant role and that the continuation of such management actions will ensure the Yellowstone grizzly bear DPS remains recovered.

Issue 3—Some commenters suggested that subunits on the Gallatin National Forest need to improve levels of secure habitat before delisting occurs even if this means closing additional USDA Forest Service roads to compensate for adjacent, highly roaded, private lands.

Response—The Yellowstone grizzly bear DPS increased 4 to 7 percent per year between 1983 and 2002 (Harris *et*

al. 2006, p. 48) with the current level of road density on the Gallatin National Forest. There is no biological reason to conclude that additional road density reductions on the Gallatin National Forest are necessary before delisting can move forward.

Issue 4—Several commenters believe that the 1998 baseline is unrealistic because habitat changes are already occurring due to oil and gas extraction, human population growth, pine beetles, and other threats to food sources. One commenter said that the 1998 baseline contained inaccuracies in its road data thus making its use as a baseline value ineffective.

Response—Habitat conditions relating to the habitat standards described in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 38–56) have either remained stable or improved since 1998 for road densities, levels of secure habitat, site developments, and livestock allotments. The 1998 baseline was not developed to address specific projects such as oil and gas development or timber harvest. Using the adaptive management approach described in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 5–11), management agencies will respond with adequate restrictions and enforcement if recreation on public lands due to increased human populations in the GYA becomes detrimental to the Yellowstone grizzly bear population. The 1998 baseline does not contain threshold values for any of the major foods due to the natural variability in their abundance and distribution that occurs annually. The 1998 baseline attempted to establish realistic habitat standards that ensure adequate habitat security and minimum livestock conflicts within the PCA. We consider the establishment of habitat thresholds for human population growth, food sources, and specific projects to be unrealistic and that the 1998 baseline will address these issues adequately through access management and limitations on site development. Regarding the accuracy of road data, the 1998 baseline for roads is calculated using the best available road layers compiled by each GYA National Forest.

Issue 5—Some commenters suspected that the 1998 baseline would not be enforced and noted that we have already allowed three projects that violate the terms of the Strategy—(1) the Togwotee Pass road expansion, (2) Grand Teton National Park's plan to build miles of paved pathways, and (3) Yellowstone National Park's installation of large trailer-home developments at Lake and Canyon for employees and contractors.

Response—The 1998 baseline values are being maintained and enforced. With their signatures on the Strategy, the agencies have committed to implement the habitat standards by adhering to the 1998 baseline (U.S. Fish and Wildlife Service 2007, pp. 13, 63–67), amending the forest plans on the six GYA National Forests, and implementing changes to the Superintendent's Compendiums regulating habitat management within Yellowstone and Grand Teton National Parks. One phase of the Togwotee Pass road expansion that would have violated the secure habitat terms of the Strategy (U.S. Fish and Wildlife Service 2007, pp. 39–44) has been reevaluated and abandoned because it violated the agreed-upon habitat standards (U.S. Fish and Wildlife Service 2007, pp. 38–56). The paved pathways in Grand Teton National Park's plan are for exclusive use by bicyclists and pedestrians and, therefore, do not violate the established limits on motorized access routes. The addition of trailer homes at Lake and Canyon in Yellowstone National Park does not violate the developed site standard because administrative site expansions for improvement of management on public lands, for temporary construction camps, or for temporary housing for major maintenance projects are exempt.

Issue 6—Many commenters objected to the exceptions that we allow to the 1998 baseline regarding the 1 percent rule for temporary changes and the application rules for permanent changes in secure habitat and developed sites. They believe that these allowances are unacceptable and not based on biology. Some commenters asked why replacement habitat used to mitigate permanent changes in secure habitat would only be maintained for 10 years and suggested that this would lead to a net loss of secure habitat over time. Other commenters noted that exceptions allowed in the USDA Forest Service's Draft EIS (USDA Forest Service 2004, p. 141) could result in an increase in developed sites above 1998 levels. Some groups believe that the 1 percent rule was too restrictive and questioned why the Service would implement more strict standards than those in use while the grizzly population was increasing (i.e., the Guidelines).

Response—Regarding developed sites, the habitat standard in the Strategy states that there will be no net increase in the capacity or number of developed sites from the 1998 baseline (U.S. Fish and Wildlife Service 2007, p. 42). Any proposed expansion of an existing developed site or any new developed sites will be analyzed, with the potential detrimental and positive impacts on grizzly bears documented, through a biological evaluation or assessment. This evaluation/assessment would determine the mitigation necessary for any proposed increases in number or capacity of developed sites. The final EIS states that any project that changes the number or capacity of developed sites must follow specific application rules requiring that any new sites be mitigated by removing an existing site within that subunit to offset any increases in human capacity, habitat loss, or human access to surrounding habitats (USDA Forest Service 2006a, p. 36). The application rules allow for an expansion of developed campgrounds if an equivalent capacity of dispersed campsites is eliminated. Administrative site expansions are exempt from human capacity mitigation expansion only if they are necessary for enhancement of management of public lands and other viable alternatives are not available.

The requirement to maintain secure habitat for 10 years is considered a minimum, and cannot be eliminated after the 10 years unless mitigated by an equal quantity and quality of secure habitat that then must be retained for at least 10 years. There will be no net loss of secure habitat in any subunit. Temporary changes in secure habitat may reduce secure habitat for a period no longer than 3 years and can be no larger than 1 percent of the largest subunit size within that Bear Management Unit. All secure habitat would be restored upon completion of a temporary project. There are no biological data that demonstrate that the temporary 1 percent level of secure habitat disturbance in any subunit has had any detrimental impact on the grizzly bear population.

J. Whitebark Pine

Issue 1—Numerous commenters noted the importance of whitebark pine to grizzly bear survival and reproductive success. They believe that we were overly optimistic about the severity of the decline of whitebark pine in the GYA and the potential impacts to the Yellowstone grizzly bear DPS. These commenters suggested that we complete a more thorough analysis of impacts of potential decreases in whitebark pine cone production. Several commenters were concerned that the monitoring systems described by the Strategy will not detect changes in the grizzly bear population related to decreases in whitebark pine cone production soon enough, and that there is no clear management response if this occurs.

Response—We have added additional information to the final rule concerning potential threats to whitebark pine and possible impacts to grizzly bears. The

extent to which whitebark pine nut production will be affected across the landscape is unknown and difficult to calculate with any degree of certainty. Instead, managers will use an adaptive management approach that addresses poor food years with responsive management actions.

The Strategy commits the agencies to intensive monitoring of all grizzly bear vital rates, and the relationship of these rates to changes in major foods and levels and types of human activities. Vital rates that are more sensitive to habitat changes such as litter size and cub survival also will be monitored. Due to the reproductive biology of grizzly bears in which fertilized eggs are not implanted into the uterus if the nutritional status of the female is inadequate, poor whitebark pine production resulting from a landscape scale decrease in overall carrying capacity would be detected by a decreased number of females with cubs-of-the-year.

In the short-term, management responses to poor whitebark pine cone production years will include immediate limitation on all discretionary mortalities; enhanced outreach and education to minimize bear/human conflicts and the availability of attractants in bear habitat that might promote such conflicts; notice to residents and users of bear habitat about the possible increased foraging of bears in peripheral habitats; detailed monitoring of food habit shifts and possible changes in home range size and locations, particularly for adult females; limitation of human activities in new or expanded feeding areas should there be changes in range or feeding area; and requests for a status review and/or immediate emergency relisting. The long-term response to decreases in whitebark pine will be continued efforts to replant whitebark pine, habitat management that encourages whitebark pine recruitment and growth, and enhancing secure habitat availability in specific areas outside the PCA where healthy whitebark pine may be available.

Issue 2—Some commenters critiqued the current monitoring protocol for whitebark pine. Specifically, one commenter suggested that the Service update the monitoring protocol for whitebark pine to count dead trees as cone production equal to zero, so that whitebark pine mortality due to pine beetle and blister rust is reflected in total cone production estimates. Other commenters recommended that any delisting proposal be intimately tied with whitebark pine restoration and protection from mountain pine beetle attack via verbenone (a hormone that decreases mountain pine beetle success).

Response—We believe that the current whitebark monitoring system provides a representative, ecosystem-wide index of cone production, numbers of dead trees and the sources of death, and changes in pine nut production over time. This comprehensive monitoring system is made possible by the synergistic work of the Study Team, the Greater Yellowstone Whitebark Pine Monitoring Working Group, and the Whitebark Pine Subcommittee.

Currently, the Study Team monitors 19 whitebark pine cone production transects within the PCA, 9 of which have been monitored on an annual basis since 1980 (Knight *et al.* 1997, p. 14). The purpose of monitoring these transects is to assess whitebark pine production, because Blanchard (1990, p. 362) demonstrated that grizzly bears in the GYA use whitebark pine seeds almost exclusively when pine cone production averages more than 20 cones per tree. As such, counting dead trees which have no cone production produces an unreliable estimate of cone production of live trees.

We agree that it is important to monitor mortality of whitebark pine trees due to blister rust infection and mountain pine beetle infestation. One of the three stated objectives of the Greater Yellowstone Whitebark Pine Monitoring Working Group is to ''* * * estimate survival of individual whitebark pine trees greater than 1.4 m high'' (Greater Yellowstone Whitebark Pine Monitoring Working Group 2005, p. 96). To assess whitebark pine mortality, the Greater Yellowstone Whitebark Pine Monitoring Working Group has established more than 70 transects outside the PCA and works closely with statisticians to ensure a representative sample and a high power of inference (Greater Yellowstone Whitebark Pine Monitoring Working Group 2006, p. 76) for more accurate results.

The Whitebark Pine Subcommittee, formed in 1998, is an interagency group comprised of members from the USDA Forest Service, the National Park Service, the Study Team, and the Whitebark Pine Ecosystem Foundation (USDA Forest Service 2006a, p. 148). The Whitebark Pine Subcommittee coordinates the implementation of restoration techniques, management responses, and gathering whitebark pine status information. Current work on whitebark pine includes planting in several areas, cone collection from healthy trees, silvicultural treatments to improve growth and establishment, prescribed burning to encourage natural whitebark pine seedling establishment, and surveys for healthy trees that may possess blister rust resistant genes.

Verbenone is an anti-aggregation pheromone of the mountain pine beetle (Kegley and Gibson 2004, p. 1). It has usefulness in protecting individual trees or small areas 0.4 ha (1 ac) from pine beetle attack (Kegley *et al.* 2003, pp. 4–5, Kegley and Gibson 2004, p. 1), but its use is limited to individual high-value trees or very small areas. Its use is impractical over thousands of square kilometers throughout an ecosystem.

Under the Strategy, the Study Team will continue to work with the Greater Yellowstone Whitebark Pine Monitoring Working Group and the Whitebark Pine Subcommittee to monitor whitebark pine cone production, the prevalence of white pine blister rust, whitebark pine mortality, and to actively restore whitebark pine in the GYA.

Issue 3—One commenter stated that the Service failed to consider the threat of dwarf mistletoe to whitebark pine.

Response—While dwarf mistletoe can infect and kill whitebark pine trees, it has only ever been detected on one whitebark pine tree in the GYA of the thousands surveyed each year (Greater Yellowstone Whitebark Pine Monitoring Working Group 2005, p. 111). There is no evidence to suggest that dwarf mistletoe represents a serious threat to whitebark pine as a food source for grizzly bears, but the Greater Yellowstone Whitebark Pine Monitoring Working Group will continue to monitor for its presence on the transects it has distributed throughout the GYA.

K. Cutthroat Trout

Issue 1—Some commenters suggest delisting be delayed until the Yellowstone cutthroat trout status review is complete and the findings can be considered in our decision.

Response—The Yellowstone cutthroat trout was found to be not warranted for listing under the Act on February 21, 2006 (71 FR 8818).

Issue 2—Some commenters noted that we did not assess the threat to cutthroat trout from direct competition for food between non-native, invasive New Zealand mud snails and cutthroat trout fry.

Response—The New Zealand mud snail (*Potamopyrgus antipodarum*) is a recently arrived invasive species that was first observed in the GYA in 1994 (Hall *et al.* 2006, p. 1122). They are most abundant in the mid-elevation geothermal streams in Yellowstone National Park. New Zealand mud snails can occur in such great abundance that they out-compete and displace native

aquatic invertebrates that are the preferred foods of cutthroat trout. However, the Service's 12-month finding on a petition to list Yellowstone cutthroat trout stated that ''While it is likely this organism (New Zealand mud snail) is increasingly becoming more widespread and will continue to spread, to date there is no evidence that implicates the New Zealand mud snail in the collapse of any conservation populations of Yellowstone cutthroat trout'' (71 FR 8829, February 21, 2006). Because cutthroat trout are not as important to reproductive female grizzly bears as previously thought (Felicetti *et al.* 2004, p. 496, Reinhart and Mattson 1990, p. 349; Mattson and Reinhart 1995, pp. 2076–2079), we do not foresee New Zealand mud snails as a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range in the foreseeable future.

Issue 3—A few commenters noted that the Yellowstone National Park lake trout removal program has not succeeded in reversing the decline in the number of cutthroat trout spawning in the tributaries to Yellowstone Lake.

Response—Over 100,000 lake trout were removed from Yellowstone Lake between 1994 and 2004. The average length of captured lake trout and the catch per unit effort have declined during this time, suggesting that lake trout control efforts are impacting the population. Fewer and smaller lake trout will have a reduced impact on cutthroat trout. The lake trout removal program will continue. Overall, we do not foresee a decline in Yellowstone cutthroat trout as a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range in the foreseeable future (see Factor E below).

Issue 4—One commenter stated that the decline in availability of spawning cutthroat trout may be forcing more grizzlies out of Yellowstone National Park where they are at greater risk of human-caused mortality.

Response—Only a small proportion of the Yellowstone grizzly bear DPS eat cutthroat trout and the nutritional contribution of cutthroat trout to the overall diet of those few bears is minimal (Felicetti *et al.* 2004, p. 496). Movement data from radio-collared grizzly bears who consume trout do not indicate these bears move outside Yellowstone National Park any more than bears eating foods other than trout. The Strategy and the Study Team have established biologically sustainable mortality limits for the entire GYA and if bears experience unsustainable mortality levels as a result of leaving Yellowstone National Park in search of alternative foods to cutthroat trout, this trend will be detected and addressed.

L. Army Cutworm Moths

Issue 1—Most comments we received about army cutworm moths addressed the proposed rule's lack of a discussion about the impacts of global climate change and pesticide use on the moths. Some commenters believe that we should analyze the impacts of human recreation on grizzly bear use of army cutworm moth sites and that identified sites should be protected from heavy recreation and development.

Response—The final rule contains a discussion of the potential effects of global climate change and pesticides on army cutworm moths. The Study Team is sponsoring research on the geospatial prediction of army cutworm moth sites that will help managers identify sites that are potentially exposed to human recreational use. It is highly unlikely that any of the high-elevation sites used by the moths, all of which are on public lands, will be exposed to development.

M. Availability of Ungulates

Issue 1—Some commenters noted that we failed to consider the multiple factors that may affect the availability of ungulate carcasses to grizzly bears in the future. These include brucellosis control and management plan impacts on the availability of elk and bison, the potential for chronic wasting disease to afflict elk populations, competition with wolves at carcasses, displacement of female grizzlies with cubs, loss of winter habitat and migration routes due to human housing trends, and fewer carcasses available to grizzlies in the spring due to milder winters.

Response—The final rule contains a discussion of all of these issues.

Issue 2 —One commenter noted that we failed to consider the large declines of the northern Yellowstone elk population and how or if this may affect the grizzly bear population.

Response—The northern elk herd declined from about 17,000 elk in 1995 to about 8,000 elk in 2005. The decline has been attributed to a variety of factors including severe winters, drought, hunter harvest, and increased predation on elk calves by grizzly bears, black bears, and wolves (Vucetich *et al.* 2005, pp. 266–268; Barber *et al.* 2005, pp. 42–43). The grizzly bear population has continued to increase at 4 to 7 percent per year during this time period, meaning there is no detectable cause and effect relationship between the elk population decline and the health of the grizzly population.

N. Hunting

Issue 1—Many commenters were concerned that the Yellowstone population cannot sustain additional human-caused mortality and that this will lead to a decline in the population and eventually to their extinction.

Response—Because the revised sustainable mortality limits for independent males and females include mortalities from all sources (Interagency Grizzly Bear Study Team 2005, pp. 6–7), including hunting, and are applied ecosystem-wide within the Conservation Strategy Management Area (Figure 1), hunting should never threaten the Yellowstone grizzly bear population. Hunting is a discretionary mortality source and will occur only if the mortality limits from all causes have not been exceeded (U.S. Fish and Wildlife Service 2007, p. 31).

Issue 2—Some commenters requested that we discuss the potentially negative impacts on grizzly bear population dynamics that can be caused by hunting, particularly when large males are targeted.

Response—When large males are removed from the population, new male bears may move into an area and kill resident females' cubs (Swenson *et al.* 1997b, p. 450). This process of sexually-selected infanticide has been documented in Scandinavia (Swenson *et al.* 1997b, p. 450). However, the only study of sexually-selected infanticide conducted in North America concluded that a limited hunting season under a sustainable mortality regime does not decrease cub survival (McLellan 2005, p. 146). This issue is still being debated in the scientific community. For more discussion about this issue, please see Issue 2 under subheading A in the Summary of Peer Review Comments section below. Because hunting in the Yellowstone ecosystem will be limited, it is unlikely to have an impact on the population dynamics of the Yellowstone ecosystem population.

Issue 3—Many commenters are opposed to sport hunting of any kind and believe such practices to be barbaric, unnecessary, and unethical.

Response—While we respect the values and opinions of all commenters, we are required by law to make decisions based on the best available science. As such, the various values that people hold about sport hunting are outside the scope of our decision-making authority. The Study Team has established sustainable mortality limits for the Yellowstone grizzly bear population that ensure that hunting will not threaten the overall status of the

population (Interagency Grizzly Bear Study Team 2005, pp. 5–9).

Issue 4—One commenter noted that hunting mortality would not be compensatory, because it would take place mostly in Wilderness Areas rather than developed areas, where most human-caused mortalities occur.

Response—Hunting will always be a source of compensatory mortality for the Yellowstone grizzly bear DPS because all hunting mortalities will fall within the sustainable mortality limits established by the Study Team and the Strategy. Hunting permits will not be issued by the States if mortality limits are exceeded.

Response—One commenter suggested that we research the effects of hunting on grizzly bear/human conflicts.

Response—We agree that it would be useful to compare grizzly bear/human conflicts before and after the implementation of a hunting season to demonstrate its effects on the frequency of grizzly bear/human conflicts. The Study Team and State agencies collect data on grizzly bear/human conflicts, and will continue to do so after delisting. These data are reported and displayed spatially in the Study Team's Annual Report. If the effects of any change in the frequency, location, or nature of grizzly bear/human conflicts are detectable, the data will indicate these changes.

O. Disease

Issue 1—Most comments we received that mentioned disease did so in the context of increased susceptibility to diseases as a result of genetic isolation and are discussed below in the genetic concerns section. Some commenters referenced the 2005 outbreak of parvovirus in the Yellowstone wolf population and suggested that, because this outbreak was not anticipated, we should have a plan to manage a potential epidemic disease in bears.

Response—Approximately 10 percent of the Yellowstone grizzly population is currently tracked using radio collars. The Study Team examines all bears captured for research or management purposes, and performs post mortem examinations on the carcasses of dead bears. If a disease outbreak were to occur, it would be identified promptly. Due to the lack of evidence that diseases and parasites play any significant role in grizzly bear population dynamics in the GYA (see Factor C below), we do not view developing a management plan to respond to a potential outbreak as necessary.

P. Human-caused Mortality, Poaching, Grizzly Bear/Human Conflicts, and Information and Education Programs

Issue 1—Several commenters were concerned that poaching would increase without the deterrent of prosecution under the Act. Many more questioned how much enforcement would occur after delisting and whether the States had the infrastructure or the desire to pursue poaching investigations. Some commenters noted that the number of State enforcement officers is lower than Federal enforcement officers, and that enforcement would be reduced under State management.

Response—The States are committed to prosecuting illegal grizzly bear kills, as per the State plans (U.S. Fish and Wildlife Service 2007, p. 15), and they have the legal authorities to do so under State law (U.S. Fish and Wildlife Service 2007, pp. 72–76). There are no data to suggest that the jurisdiction under which poaching is prosecuted affects the willingness of poachers to commit the crime.

State and Federal conservation officers are usually cross-commissioned, so that Federal conservation officers cite State law violators when they encounter them, and vice versa. National Park Service rangers would have little occasion to encounter State conservation law violators, but State conservation officers, our special wildlife agents, Tribal conservation officers, and USDA Forest Service enforcement officers will continue to cooperate in the investigation of poaching incidents.

Issue 2—We received numerous comments suggesting how and why we should focus on reducing grizzly bear/hunter conflicts. Many thought we should expand efforts to reduce grizzly bear/hunter conflicts with black bear and elk hunters either through I & E or stricter regulations. Some commenters recommended that all hunters be required to carry bear spray and hang their meat immediately when hunting in grizzly bear territory. Several commenters believed that the practice of black bear baiting, (currently permitted in Idaho and Wyoming) should be illegal in all suitable grizzly bear habitat or outlawed entirely.

Response—The Strategy prioritizes outreach and education to minimize grizzly bear/human conflicts (U.S. Fish and Wildlife Service 2007, pp. 57–62). The State plans also contain direction on ways to minimize grizzly bear/hunter conflicts (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, p. 15; MTFWP 2002, pp. 24, 62; WGFD 2005, pp. 31–35). Although the States do not currently require hunters to carry pepper spray, it is strongly encouraged in hunter education courses and other educational materials. Elk hunters in Grand Teton National Park are required to carry bear spray, and this may prove to be a research opportunity to quantify how much, if any, this requirement reduces grizzly bear conflicts with elk hunters.

Montana does not allow black bear baiting in any areas and black bear baiting inside the PCA is not allowed in Idaho or Wyoming (Servheen *et al.* 2004, p. 11). In areas outside the PCA in Idaho and Wyoming, State wildlife agencies will monitor grizzly bear mortality associated with black bear hunting to respond to problems if they occur. The Yellowstone grizzly bear population has increased while black bear baiting has been allowed in Idaho and Wyoming outside the PCA, so it cannot be identified as a significant factor that will threaten the recovered status of the Yellowstone DPS.

Issue 3—One commenter noted that we must consider the impacts of increased poaching in habitat surrounding areas of high-density oil and gas production.

Response—Poaching violations may increase in the vicinity of resource extraction boom towns, and the magnitude of increase relative to population growth is greater at industrial sites than at agricultural or recreational sites (Berger and Daneke 1988, pp. 285–287). State agencies are aware of this potential and will manage accordingly through increased Information and Education efforts and enforcement near boom towns.

Issue 4—To prevent grizzly bear/human conflicts before they occur, many commenters recommended that proper sanitation and garbage storage be implemented in all occupied habitat and, preferably, in all suitable habitat. These preventative measures should be in place before delisting occurs and are especially important in light of projected increases in human population and private land development over the next several decades.

Response—The USDA Forest Service currently has food storage orders in most Service-defined suitable habitat, and food storage orders will be implemented in all suitable habitat found within National Forests by 2008. For a complete map of when and where food storage orders will take effect on National Forest lands in the GYA, please see *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*. Extensive collaborative efforts involving State

wildlife agencies, NGOs, waste management companies, and private landowners to improve garbage storage and to avoid future grizzly bear/human conflicts on private lands will continue (Servheen *et al.* 2004, pp. 6–7). Over two-thirds of the suggested budgets created by the States and Federal agencies responsible for managing the grizzly bear post-delisting are for managing grizzly bear/human conflicts and Information and Education efforts (U.S. Fish and Wildlife Service 2007, p. 154). This level of commitment by responsible agencies demonstrates their understanding that I & E efforts and conflict management and prevention are crucial elements of maintaining a healthy Yellowstone grizzly bear population.

Issue 5—Some commenters believe that aversive conditioning, not management removals, should be emphasized when conflicts with livestock occur or when conflicts are the result of human attractants.

Response—The Federal and State management agencies emphasize preventative measures and aversive conditioning whenever possible (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 15–16; MTFWP 2002, pp. 46–49; U.S. Fish and Wildlife Service 2007, pp. 59–60; WGFD 2005, pp. 28, 31). Management removal is only used as a last resort.

Issue 6—Some commenters thought that grizzly bear conflicts with livestock grazing on public lands should always be settled in favor of the grizzly bear.

Response—Inside the PCA, numerous sheep allotments have been retired or relocated to other, less-conflict-prone areas to accommodate grizzly bears (USDA Forest Service 2006a, p. 170). As of 2006, there are only two remaining active sheep allotments inside the PCA (USDA Forest Service 2006a, p. 168). In areas inside the PCA, grizzly bears involved in any livestock conflict will be given a second chance and relocated at least once before removal is used (U.S. Fish and Wildlife Service 2007, p. 59). Management of grizzly bear conflicts with livestock grazing on public lands outside of the PCA will be guided by the respective State wildlife agency's grizzly bear management plan and will remain within the sustainable mortality limits established for the Conservation Strategy Management Area. As such, this source of mortality will not threaten the Yellowstone grizzly bear population.

Q. Adequacy of Regulatory Mechanisms

Issue 1—Several commenters noted that the Strategy, the State plans, and the revised mortality methods cannot be considered adequate regulatory mechanisms because they are not legally enforceable. Numerous commenters also noted that the habitat standards described in the Strategy will be unenforceable due to the 2005 USDA Forest Service Planning Regulations, which revoked the use of ''standards'' in Forest Land Management Plans (70 FR 1023).

Response—By signing the Strategy, responsible agencies demonstrate that they are committed to implementing the features within their discretion and authority. The Strategy provides adequate assurance that the participating agencies will implement the agreement, which is sufficient to meet the reasonableness required for regulatory mechanisms. Furthermore, the USDA Forest Service finalized the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests and has incorporated this Amendment into the affected National Forests' Land Management Plans (USDA Forest Service 2006a, 2006b, p. 4). This amendment was completed pursuant to the 1982 planning regulations and supported by full Environmental Impact Statement analysis under the National Environmental Policy Act and would not be invalidated by a revision of the Forest Plan pursuant to the 2005 planning regulations. Yellowstone and Grand Teton National Parks appended the habitat standards to their Park Superintendent's Compendiums, thereby assuring that these National Parks would manage habitat in accordance with the habitat standards (Grand Teton National Park 2006, p. 1; Yellowstone National Park 2006, p. 44). These issues, and the use and impact of the various forest planning regulations (1982 and 2005), are discussed under Factor D below.

Issue 2—One commenter noted that the States of Wyoming, Montana, and Idaho do not currently have sufficient State laws to prevent excessive mortality. Some commenters suggested that the Interagency Grizzly Bear Committee petition Congress for legally binding, habitat protection for the PCA as a prerequisite for delisting, resulting in a piece of legislation that provides permanent, Federal, legal protection for the Yellowstone grizzly bear DPS similar to that afforded to bald eagles (*Haliaeetus leucocephalus*) by the Bald Eagle Protection Act of 1940.

Response—State agencies have the authority and the necessary State laws to limit human-caused mortality (U.S. Fish and Wildlife Service 2007, pp. 72–76) and have committed to do so by signing the Strategy (U.S. Fish and Wildlife Service 2007, p. 13).

Issue 3—Some commenters noted that because of the 2005 Roadless Rule (70 FR 25653, May 13, 2005), Inventoried Roadless Areas cannot be considered secure habitat protected by adequate regulatory mechanisms.

Response—The State Petitions for Inventoried Roadless Area Management Rule (70 FR 25654, May 13, 2005) that replaced the Roadless Area Conservation Rule (''Roadless Rule'') (66 FR 3244, January 12, 2001) was overturned September 19, 2006. Management of roadless areas must comply with the provisions of the 2001 Roadless Rule. Such areas are protected by adequate regulatory mechanisms. For further discussion, see Factor D below and our response to Issue 3 under subheading H above.

Issue 4—Some commenters noted that the proposed rule failed to include significant habitat on the Wind River Reservation. These commenters recommended that the final rule recognize the Eastern Shoshone and Northern Arapaho Tribes as active participants and discuss their plans to create grizzly bear management plans for the Wind River Reservation.

Response—The Eastern Shoshone and the Northern Arapaho Tribes of the Wind River Reservation manage wildlife within their Federally recognized boundaries (see Figure 1 above). Both of these tribes have been invited to participate as representatives on the Coordinating Committee under the Strategy (U.S. Fish and Wildlife Service 2007, p. 9). They are working with us to develop a Grizzly Bear Management Plan specific to their lands. Less than three percent of all suitable habitat will be affected by Tribal management decisions. We anticipate that their management plan will encourage grizzly bear occupancy in areas of suitable habitat on the Wind River Reservation. We have recommended that the Tribal Grizzly Bear Management Plan (currently being drafted) include grizzly bear occupancy of the Wind River Mountains on the Reservation, as this will allow grizzly bears continued access to high-elevation whitebark pine and army cutworm moths in these mountains.

Issue 5—Some commenters noted that case history (*Federation of Fly Fishers* v. *Daley,* 131 F. Supp. 2d 1158, 1167–68 (N.D. Cal. 2000)) suggests that the Strategy cannot be considered an adequate regulatory mechanism because ''no reliable source for its future funding'' exists.

Response—It is not possible to predict with certainty future governmental

appropriations, nor can we commit or require Federal funds beyond those appropriated (31 U.S.C. 1341(a)(1)(A)), but by signing the Strategy, State and Federal management agencies have committed to implement the protective features that are within their discretion and authority, and to seek adequate funding for implementation. The Strategy provides adequate assurance that the participating agencies will implement the agreement, which is sufficient to meet the reasonableness required for regulatory mechanisms. We are authorized to provide grants to States to assist in monitoring the status of recovered species under section 6(d) of the Act.

Issue 6—Some commenters disagreed with our assertion that the NEPA will adequately protect habitat outside of the PCA regarding road construction and resource extraction. They noted that reliance on NEPA or ''sensitive species'' designation to adequately protect suitable habitat outside of the PCA is not adequate because of the 2005 USDA Forest Service Planning regulations, which eliminated species' viability requirements.

Response—We believe that the potential effects on grizzly bears of any proposed projects on public land will be fully and adequately considered through the requirements of NEPA. The USDA Forest Service is designating the Yellowstone grizzly bear DPS a ''species of concern'' upon delisting (USDA Forest Service 2006b, p. 26). This designation means that the GYA National Forests must ''* * * provide the appropriate ecological conditions (i.e., habitats) necessary to continue to provide for a recovered population'' (USDA Forest Service 2006b, p. 26). For further discussion of the USDA Forest Service Planning regulations, see Factor D below.

Issue 7—Some commenters disputed the adequacy of State management plans because none of the plans contain clearly defined standards or methods of enforcing compliance of their population goals, and because States cannot compel Federal land management agencies to manage their lands in accordance with the State plans or the Strategy.

Response—It is true that States cannot compel Federal agencies to manage their lands in accordance with their State plans. However, as participants in the Strategy, both State and Federal agencies have agreed to carry out all provisions of the Strategy, including the appended State plans.

Issue 8—Some commenters expressed concern about the decentralization of grizzly bear monitoring and management efforts, believing that it would be confusing and challenging to effectively implement monitoring and management efforts across multiple jurisdictions without the cohesive force of the Act.

Response—All monitoring, reporting results, and management actions are centralized under the Coordinating Committee and the Study Team, as described in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 25–67), which all the State and Federal agencies have signed and agreed to implement. The agencies responsible for managing the Yellowstone grizzly bear population upon delisting helped develop the Strategy and have been effectively cooperating and communicating with each other about grizzly bear management decisions for the last 25 years.

R. Genetic Concerns, Isolation, and Connectivity With Other Grizzly Bear Populations

Issue 1—Numerous commenters expressed concern that, due to the isolation of the Yellowstone population, we should maintain an effective population size of at least 500 individuals to ensure long-term viability. Therefore, many commenters believe that we should set a population objective of 2,000 to 3,000 bears in the GYA or reestablish connectivity among all grizzly bear populations in the Lower 48 States (so that the total population size is approximately 2,000) before delisting occurs.

Response—Although the effective population size (i.e., the number of breeding individuals in an idealized population that would show the same amount of dispersion of allele frequencies under random genetic drift or the same amount of inbreeding as the population under consideration) of the Yellowstone grizzly bear population is lower than recommended for evolutionary success in the absence of management in published literature on evolutionary theory (e.g., Franklin 1980, p.136), the genetic program for the Yellowstone grizzly bear population will effectively address future genetic concerns (Hedrick 1995, p. 1004; Miller and Waits 2003, p. 4338). As Miller and Waits (2003, p. 4338) recommend, we will continue efforts to reestablish natural connectivity, but our partners will transplant one to two effective migrants per generation if no movement or genetic exchange is documented by 2020 (U.S. Fish and Wildlife Service 2007, p. 37).

Issue 2—Several commenters believe that the reduced heterozygosity of the Yellowstone population increases their vulnerability to disease epidemics due to a likely decrease in allelic diversity at the major histocompatibility complex locus. They noted that because the Yellowstone DPS has been isolated for the last 100 years and has not been challenged with any epidemic diseases, disease-resistant genetic material may have decreased, thereby ensuring that if an epidemic does occur, it will be severe.

Response—We do not know that allelic diversity has declined at the major histocompatibility complex locus in the GYA grizzly population. Because overall allelic diversity has declined some over the 20th century (Miller and Waits 2003, p. 4337), it may have declined at the major histocompatibility complex locus too. We do not know that the GYA population has not been challenged by epidemic diseases in the past 100 years. We can say that epidemic diseases are not known to have caused high mortality in any grizzly or brown bear population, including the Kodiak Island, Alaska population, in which heterozygosity, and presumably allelic diversity, is much lower than in the GYA population. The Study Team monitors the health of GYA grizzlies by examining all bears captured each year (approximately 60–80 captures per year) and all known mortalities. If disease or an epidemic occurs, it will be detected promptly and responded to appropriately.

Issue 3—Some commenters noted that relatively modest decreases in heterozygosity values (the proportion in an individual of loci that have more than one allele) correspond to much larger decreases in allelic diversity (due to inbreeding) and that the proposed rule does not contain an adequate discussion of this effect or its conservation implications. In other words, they believe that a population could be experiencing declines in allelic diversity that would not be detected if the only measure of genetic diversity was heterozygosity, and that we should evaluate the biological and conservation implications of a reduction in allelic diversity, if this is occurring in the Yellowstone DPS.

Response—Although allelic diversity has declined in the GYA population over the 20th century, the decline was not as precipitous as previously anticipated (Miller and Waits 2003, p. 4338). As measured by Miller and Waits (2003, p. 4337), allelic richness decreased from approximately 5.89 alleles per locus at the beginning of the 20th century (1910s) to 5.50 at the end of the century (1990s). Considering all of the information available that

examines heterozygosity and allelic diversity of grizzly bears in the GYA, Miller and Waits (2003, p. 4338) conclude that ''the viability of the Yellowstone grizzly bear population is unlikely to be compromised by genetic factors in the near future * * *'' and that ''* * * one to two effective migrants per generation from the NCDE to the YE (Yellowstone ecosystem) is an appropriate level of gene flow.'' We considered these conclusions pertinent to the genetic management of the DPS and incorporated them into the Strategy (U.S. Fish and Wildlife Service 2007, p. 37).

Issue 4—One commenter noted that our statement in Appendix D of the Strategy that ''current levels of genetic diversity * * * are not resulting in deleterious effects'' is not supported by the literature and that Miller and Waits' (2003, p. 4335) study was not designed to answer this question. Another commenter noted that deleterious effects to the Yellowstone population as a result of genetic isolation have already been documented by Dr. Michael Gilpin in his guest commentary in the Bozeman Chronicle newspaper on January 23, 2006, and that the level of inbreeding in the Yellowstone grizzly bear population is analogous to mating with first cousins.

Response—Indicators of fitness in the Yellowstone population demonstrate that the current levels of genetic heterozygosity are adequate, as evidenced by measures such as litter size, little evidence of disease, high survivorship, an equal sex ratio, normal body size and physical characteristics, and an increasing population. These indicators of fitness will be monitored annually, in perpetuity. The assertion by Dr. Gilpin that grizzly bears in the GYA are experiencing inbreeding coefficients of 12.5 percent, equivalent to mating with their first cousins, is incorrect (Miller 2006). Dr. Gilpin did not cite a source for his reported inbreeding coefficient for GYA bears, and we are unaware of this figure being reported elsewhere. Miller (2006) estimated an inbreeding coefficient for the GYA population of approximately 6 percent over the last 10 generations, not 12.5 percent over a single generation, as implied by a scenario in which first cousins mate with each other. The very low rate of loss of heterozygosity over the 20th century, in combination with the introduction of 1 or 2 effective migrants per generation (naturally or through augmentation), will ensure long-term genetic viability, and the recovered status, of the Yellowstone grizzly bear DPS (Miller and Waits 2003, p. 4338).

Issue 5—A few commenters believed that we failed to consider the relationship between isolation and elevated extinction risk. Extinction of isolated populations can occur simply as a function of their isolation and habitat size or due to increases in the magnitude of population fluctuations resulting from environmental and demographic stochasticity. They believe that we should fully consider these sources of stochasticity on the extinction risk of the Yellowstone grizzly bear DPS.

Response—This comment refers to PVAs and questions whether the persistence of the Yellowstone grizzly bear population will be significantly impacted by the effects of environmental and demographic stochasticity due to its isolation. The Service has considered population viability in considerable depth (Boyce *et al.* 2001, p. 2). Boyce *et al.* (2001, p. 1) concluded that the available data ''provide optimistic projections of the likelihood of persistence for grizzly bears in the GYE; a 99.2% probability that the GYE grizzly bear population will persist for 100 years.''

Boyce *et al.* (2001, pp. 30–31) discuss the implications of several types of stochastic (random) events on the likelihood of persistence for the Yellowstone grizzly bear population. Catastrophes were believed merely to represent extreme environmental events that had a low probability of occurrence and were unpredictable. They believe that there are insufficient data on grizzly bear genetics to understand or model genetic stochasticity, such as inbreeding depression or genetic drift. Boyce *et al.* (2001, p. 30) believe that demographic stochasticity, such as chance events associated with births and deaths, only affects viability when populations are very small (e.g., 30 to 50 bears). Similarly, Harris *et al.* (2006, p. 50) found that demographic stochasticity had little effect on the growth rate estimates unless population size fell below 100 females.

Environmental stochasticity is generally thought to be more important than demographic stochasticity when calculating extinction risk (Lande 1988, p. 1457). In light of this, Boyce *et al.* (2001, pp. 31–32, 34) recommend that the best possible analysis of population viability for the Yellowstone grizzly bear population would be based on relationships between grizzly bear vital rates (survival and reproduction) and habitat factors (a habitat-based PVA). However, the range of possible outcomes of such a modeling exercise, based on compound uncertainties, provides little management value and minimal confidence about future viability. Instead, the Strategy will ensure monitoring of multiple indices and use an adaptive management system that allows rapid feedback about the success of management actions designed to address the maintenance of a viable population.

Because it is generally accepted that isolated populations are at greater risk of extinction over the long-term, we will continue efforts to reestablish natural connectivity between the GYA and other grizzly bear ecosystems. Although natural connectivity is the best possible scenario, isolation does not constitute a long-term threat to the Yellowstone grizzly bear population because of intensive monitoring and adaptive management strategies that will remain in effect post-delisting.

Issue 6—One commenter requested that we undertake an in-depth discussion of what inbreeding depression is and the three ways in which it is manifested: (1) The unmasking of recessive, lethal alleles; (2) unmasking of partially recessive, deleterious alleles; and (3) decreases in genetic diversity; and what conservation implications these have for the Yellowstone DPS.

Response—This issue is discussed in the Supplemental Information Appended to the Recovery Plan, its supporting literature, and the literature cited in this final rule. Both the Strategy and this final rule recognize that declines in genetic diversity due to inbreeding effects are expected in isolated populations (Ralls *et al.* 1986, p. 35; U.S. Fish and Wildlife Service 2007, p. 37). We agree that inbreeding depression has the potential to negatively affect the Yellowstone grizzly bear DPS if genetic diversity declines below current levels. For this reason, we have reviewed relevant literature about this topic (Ralls and Ballou 1983, pp. 147–179; Allendorf and Leary 1986, pp. 72–76; Ralls *et al.* 1986, pp. 35–37; Lande 1988, pp. 1455–1456, 1460; Roelke *et al.* 1993, pp. 344–348; Hunter 1996, pp. 88–90; Wang *et al.* 1999, pp. 168–176) and, upon the recommendation of Miller and Waits (2003, p. 4338), our partners will translocate grizzly bears from other populations into the GYA to maintain current levels of genetic diversity if natural movement of grizzly bears into the GYA from other areas is not documented by 2020.

Issue 7—We received numerous comments regarding the plan to augment the Yellowstone DPS with grizzly bears from the NCDE population to address genetic concerns should connectivity between these two

ecosystems not occur naturally by 2020. Some of these comments pertained to the feasibility of transplanting bears from the NCDE to Yellowstone. These commenters noted that, based on augmentation experiments in the Cabinet-Yaak Ecosystem, we may have to move eight bears to get two to stay and reproduce successfully (i.e., become effective migrants). Some commenters also questioned whether survival of augmented bears would be affected by interactions with other grizzly bears and/or a bear's willingness to stay in a new environment instead of one it was highly familiar with. Finally, some commenters suggested that high mortality in the NCDE may preclude this option, because moving bears from the NCDE to Yellowstone would count as a mortality in the NCDE ecosystem.

Response—The feasibility of translocating grizzly bears for genetic augmentation is not untested. Translocation has been successfully employed in the Cabinet-Yaak Ecosystem (Kasworm *et al.*, in press, p. 6). Kasworm *et al.* (in press, pp. 6, 8) were only able to document successful reproduction by one of the three bears that remained in the area after being translocated; confirmation of successful reproduction events for the other two bears was not possible because they lacked reference genetic material. Any bear that is translocated from the NCDE into the GYA will be radio-collared and monitored to determine whether it remains in the area and survives. As in the Cabinet-Yaak Ecosystem, genetic analysis will be used in subsequent years to confirm whether a transplanted bear has successfully reproduced in the GYA. The exact number of translocated migrants into the GYA will be determined through these monitoring activities. Any bear translocated from the NCDE to the GYA would be counted as an NCDE mortality. Please see our response to Issue 12 in this section below for more discussion about the adequacy of the NCDE to serve as a source population. Augmentation in the GYA may not be necessary if natural immigration occurs before 2020.

Issue 8—One commenter questioned our use of the ''one-migrant-per-generation rule'' and believed that our definition of ''effective migrant'' was incorrect. Another commenter believed we failed to consider the effects of other evolutionary processes (mutation, directional, or stabilizing selection) on the one-migrant-per-generation rule. Both recommended more research to answer whether the one-migrant-per-generation rule was appropriate and adequate to address genetic concerns for the Yellowstone DPS.

Response—Our recommendation to augment the population with one migrant per generation is based on Miller and Waits (2003, p. 4338), who conclude that one to two effective migrants per generation is appropriate to maintain current levels of genetic diversity. ''The viability of the Yellowstone grizzly population is unlikely to be compromised by genetic factors in the near future as we hypothesized based on modern samples. Rather, the genetic consequences of inbreeding and isolation are likely to transpire over longer time periods (decades or centuries)'' (Miller and Waits 2003, p. 4338). Regarding our definition of an ''effective migrant'' as one which remains in the area, survives, and successfully reproduces, we recognize that a more complete definition involves measures of relatedness between the source and recipient population, as well as other genetic measures (Wang 2004, p. 335). If translocation is required in the future, our partners will consult with geneticists and use the best available science to determine how many bears must be translocated from the source population to equal one effective migrant to the Yellowstone grizzly bear DPS. Regarding the effects of other selective forces on the one-migrant-per-generation rule, Wang (2004, p. 341) concluded that, ''In general, the one-migrant-per-generation rule is robust to the systematic forces of selection and mutation.''

Issue 9—Most commenters preferred the idea of natural connectivity over artificial augmentation and noted that connectivity is a vital component of recovery and should be restored before delisting can occur. Numerous commenters wanted population connectivity re-established with the NCDE and Bitterroot ecosystem and the Bitterroot population reintroduction implemented. Conversely, some commenters supported the augmentation plan because they viewed it as effectively nullifying the need to establish natural population connectivity.

Response—We prefer natural reconnection as well and are actively involved in efforts to maintain and expand the opportunities for grizzly bears to move into and out of the Yellowstone ecosystem via the linkage zone program. However, we cannot control bear movement and as discussed in the final rule (see Behavior section above), they have limited dispersal mechanisms. By working to maintain current movement opportunities while implementing conservation actions to recover populations in other grizzly bear ecosystems, we anticipate that bears will naturally reestablish themselves between recovery ecosystems and achieve connectivity. We agree that the establishment of a grizzly bear population in the Bitterroot Recovery Zone would contribute to recovery of the grizzly bear in the Lower 48 States (Boyce 2000, p. 6–243). However, the lack of natural connectivity will not threaten the Yellowstone DPS because of the genetic management plan described in the Strategy (U.S. Fish and Wildlife Service 2007, p. 37).

Issue 10—Several commenters objected to relocating bears from the NCDE to the GYA to address genetic concerns because it would violate the Act's vision of ''self-sustaining populations,'' ''recovery of populations in the wild,'' and ''natural recovery.'' They cited the need for augmentation as evidence that the Yellowstone DPS is not truly recovered.

Response—The Act does not require a ''hands off'' approach as a prerequisite for delisting. In fact, the presence of adequate regulatory mechanisms to ensure that appropriate management and monitoring activities continue is required before delisting can occur. For the Yellowstone grizzly bear DPS to remain unthreatened in all or a significant portion of its range in the foreseeable future, active management is necessary to limit mortality, provide adequate habitat, respond to grizzly bear/human conflicts, and maintain genetic diversity either through natural connectivity or through translocation. In this way, the Yellowstone grizzly bear DPS is a ''conservation-reliant species'' (Scott *et al.* 2005, p. 383). Augmentation is proposed as a precautionary measure based on the recommendations of Miller and Waits (2003, p. 4338) to maintain current levels of genetic diversity, should grizzly bear movement into the GYA not occur over the next 20 years.

Issue 11—One commenter suggested that we analyze the benefits and disadvantages of genetic augmentation before concluding that benefits outweigh potential negatives.

Response—The recommendation to either allow bears to move into the Yellowstone ecosystem or to use augmentation in lieu of natural movement was made by genetics experts in Miller and Waits (2003, p. 4338). They detail the biological and genetic rationale for this recommendation, and we agree with their analysis and conclusions. Should future genetic data challenge the conclusions of Miller and Waits (2003, p. 4338), the Study Team and the Coordinating Committee will rely upon the best available scientific

information to guide management of the Yellowstone DPS.

Issue 12—A few commenters noted that our plan to augment the Yellowstone DPS with one to two bears per generation was flawed because it violated a key assumption that the source population is infinite in numbers. They believe that the proposed rule also overlooked the possibility that the Yellowstone grizzly bear DPS could go extinct as a result of the NCDE going extinct; and furthermore, we failed to consider the genetic issues affecting the NCDE, which may itself be an isolated population from Canada, due to ongoing and increasing development just north of the border.

Response—We make no assumption that the NCDE or any other population is infinite in numbers. The NCDE is not genetically isolated from areas in Canada, and male grizzly bear movement across Highway 3 has been documented (Proctor 2003, p. 24). The NCDE population has higher allelic diversity and heterozygosity values than the Yellowstone grizzly bear DPS (Paetkau *et al.* 1998, p. 421) and its relative proximity and short time of separation from the Yellowstone grizzly bear DPS make it an ideal genetic source population. The NCDE population is larger than previously thought, with more than 500 individuals (Kendall 2006), and the portion of the population that is located in the North Fork of the Flathead Valley just north of the United States/Canadian border is the highest density grizzly bear population anywhere in North America outside of Alaska (LeFranc *et al.* 1987, pp. 52–53; McLellan 1994, p. 21; Mowat *et al.* 2005, p. 41). We will continue to cooperate with Canadian wildlife and land management agencies to promote grizzly bear conservation and to mitigate projects in Canada that have the potential to negatively impact U.S. grizzly bear populations.

The placement of bears into the Yellowstone by augmentation would be a precautionary approach to assure that genetic issues are not a factor in the survival of the Yellowstone population. As stated by Miller and Waits (2003, p. 4338)—''The viability of the Yellowstone grizzly population is unlikely to be compromised by genetic factors in the near future.'' Although we view the NCDE as the most likely source population, many other appropriate grizzly bear populations in Canada could serve as source populations, should the NCDE population not be adequate for some unforeseen reason. We have previously cooperated with international partners to translocate bears from the North Fork of the Flathead River in Canada to the Cabinet-Yaak ecosystem (Kasworm *et al.* 1998, p. 148).

S. Comments About The States' Management Approach

Issue 1—Numerous commenters expressed concern over the management approach that will be taken by the States of Montana, Idaho, and Wyoming. In general, commenters questioned the desire of the States to manage the population in the best interest of grizzly bears, and cited the historical and current anti-predator attitudes frequently displayed by residents and State wildlife agencies and commissions, as evidence that State management of the Yellowstone DPS could result in severe decline.

Response—The States are committed to manage grizzlies in accordance with the Strategy and its appended State grizzly bear management plans. By signing the Strategy, all management agencies have agreed to adhere to the sustainable mortality limits.

Issue 2—Some commenters noted that the head of WGFD has said that Wyoming intends to manage the population down to the minimum allowed by the Strategy (500 bears) and other WGFD Commissioners have said they plan to push for an increase in allowable mortality from the recently revised 9 percent to 12 percent. They note that four Wyoming counties, which encompass most grizzly bear habitat in Wyoming, have outlawed grizzlies within their borders and asserted that their State-authorized land use planning legislation trumps the bear management responsibilities of WGFD.

Response—In response to concerns about the ordinances, regulations, or resolutions passed by county governments in Wyoming regarding the presence or distribution of grizzly bears in these counties, we requested a letter from the Wyoming Attorney General's office clarifying the authority of counties in Wyoming to legislate in the area of grizzly bear management. The Wyoming Attorney General's office's response, dated August 8, 2006, states on p. 2, '''* * * as an arm of the State, the county has only those powers expressly granted by the constitution or statutory law or reasonably implied from the powers granted.' *Laramie Co. Comm'rs* v. *Dunnegan,* 884 P.2d 35, 40 (Wyo. 1994). Neither the Wyoming Constitution nor the legislature has provided the counties in Wyoming with any expressed or implied authority over management of grizzly bears. Therefore, counties lack the authority to enact any ordinances(s), regulation(s), or resolution(s) which would affect the (Wyoming Game and Fish) Commission's Grizzly Bear Plan on mortality or distribution of grizzly bears in Wyoming'' (Martin 2006).

This letter clearly indicates that Wyoming county governments have no authority to affect grizzly bear management in county ordinances and have no legal standing or impact on commitments made by the Wyoming Game and Fish Commission.

Wyoming has committed to the revised (9 percent) thresholds as per their signature on the Wyoming Game and Fish Commission approved Strategy. Changes in mortality limits cannot be completed unilaterally by Wyoming, or any one management agency, but instead must be based on the best available science, and documented by a Study Team lead process that is opened to public comment and approved through a Coordinating Committee majority vote (U.S. Fish and Wildlife Service 2007, p. 63).

T. Lack of a Secure, Long-Term Funding Source

Issue 1—A number of comments received maintained that, before delisting can occur, a long-term secure funding source must be obtained. They stated that this funding issue must be addressed to ensure that the extensive monitoring and management plans, as well as conflict prevention through I & E programs described in the Strategy, are carried out. Some commenters suggested that long-term funding security could be achieved by creating a trust fund as the Yellowstone Ecosystem Subcommittee has discussed at several meetings. Other commenters suggested that inadequate funding in any given year be a trigger for a Biology and Monitoring Review and potential relisting.

Response—It is true that there is no guarantee of long-term funding for grizzly bear management by any of the States or the Federal Government. However, the funding issue remains whether the Yellowstone grizzly bear DPS is delisted or not. It is not possible to predict future governmental appropriations, nor can we commit or require Federal funds beyond those appropriated (31 U.S.C. 1341(a)(1)(A)), but by signing the Strategy, responsible agencies demonstrate that they are committed to implementing the features within their discretion and authority, and to pursuing adequate funding. The Strategy provides adequate assurance that the participating agencies will implement the agreement, which is sufficient to meet the reasonableness

required for regulatory mechanisms. The creation of a trust fund has been explored by the Interagency Grizzly Bear Committee, but would require the acquisition of an estimated $40 million to endow the fund.

In response to these concerns, we have made inadequate funding in any given year a trigger for a Biology and Monitoring Review. The purpose of such a Review would be to determine whether the fiscal short-coming is a threat to the implementation of the Strategy to such an extent that it also threatened the long-term viability of the Yellowstone DPS.

U. Triggers for Relisting and Monitoring Plan

Issue 1—Many commenters were uncomfortable with the process that could lead to relisting, fearing that the process would be slow, bureaucratic, or subject to political influence. Many recommended additional, clearly defined thresholds leading to immediate relisting, rather than merely to the first step in a long process that may lead to relisting (i.e., a Biology and Monitoring Review). Some recommended that we develop an emergency response process specifically designed for the Yellowstone population that gives us authority to bypass the traditional Act listing methods.

Response—The listing procedures described in the Act allow prompt emergency listings if necessary. For instance, the desert tortoise was petitioned in May 1989 and listed on August 7, 1989, in an emergency listing rule (54 FR 32326, August 4, 1989). An emergency relisting can be pursued independently by the Service or in response to a recommendation by the Study Team or Coordinating Committee. This process is adequate to respond to a precipitous decline in the Yellowstone grizzly bear DPS or a significant threat to its habitat in a timely manner and precludes the need for a specific trigger that would begin an emergency response process.

Issue 2—Several commenters believe that because a decline in any of the four major foods represents a decrease in the GYA's carrying capacity, we should include threshold values for these food sources that either trigger a response action or plans to protect additional habitat.

Response—Aside from the well-documented association between whitebark pine cone crop size and subsequent management actions on grizzly bears (Mattson *et al.* 1992, p. 432), we have not been able to detect any statistically significant relationships between abundance of the other three major foods and grizzly bear vital rates. Those foods have either fluctuated (e.g., ungulates, army cutworm moths), or declined (e.g., cutthroat trout), during the period when the Yellowstone grizzly bear population was increasing at a rate between 4 and 7 percent annually. Due to this natural annual variation in abundance and distribution, there is no known way to calculate minimum threshold values for grizzly bear foods. Instead, managers will use an adaptive management approach that addresses poor food years with responsive management actions, such as limiting grizzly bear mortality, increasing Information and Education efforts, and considering relisting, if appropriate.

Issue 3—Several commenters believe we failed to address the issue of lag time between habitat degradation and loss, and changes in vital rates. They believe that the proposed rule relies almost exclusively on monitoring population parameters rather than habitat parameters to detect a future threat, and because of this time lag, we should include habitat thresholds that act as triggers for a Biology and Monitoring Review.

Response—The Strategy commits the management agencies to intensive monitoring of all grizzly bear vital rates, and their relationship to changes in major foods and the levels and types of human activities in their habitat. This monitoring does not solely rely on vital rate monitoring to indirectly infer changes in habitat, but will produce annual results on any changes in habitat values, key food production, and possible disease in key foods. Please see our response to Issue 2 in this subheading, above, for more information.

Issue 4—Many commenters criticized our use of unduplicated counts of females with cubs-of-the-year to estimate population size. They suggested we should abandon this measure for a more reliable and accurate method because of the biases such as observer variability and differences in detection in different habitat types.

Response—The Study Team reviewed the feasibility of several different population estimation methods (Interagency Grizzly Bear Study Team 2005, pp. 12–13, 17–31). Because of the high cost of DNA-based population surveys ($3.5 million to $5 million) and the lag between sampling and a resulting population estimate (3 years), annual use of DNA-based population surveys is not feasible or appropriate for our objectives of establishing annual population estimates and sustainable mortality limits. The Study Team rejected the idea of using capture-mark-recapture techniques with the radio-collared sample of grizzly bears due to unreasonably large confidence intervals (Interagency Grizzly Bear Study Team 2005, p. 12).

Because of the strict rule set used to collect females with cubs-of-the-year data (Knight *et al.* 1995, p. 246), it is inherently conservative and tends to underestimate the number of females with cubs-of-the-year. The Study Team chose to use the Chao2 estimator to correct many of the biases associated with females with cubs-of-the-year data concerning sighting heterogeneity (Keating *et al.* 2002, pp. 170–172; Interagency Grizzly Bear Study Team 2005, p. 20). The Chao2 estimator and the model averaging approach described in the Supplement to the Reassessing Methods Document (Interagency Grizzly Bear Study Team 2006, pp. 2–10) reflect the best available scientific method for calculating an annual population index and establishing biologically sustainable annual mortality limits for the Yellowstone grizzly bear population.

Issue 5—Some commenters stated that a DNA-based survey would be a better monitoring method and that it would provide much more information about the population. One commenter noted that the proposed monitoring of genetic diversity does not specify the point at which population augmentation would be considered necessary. Another believed that the proposed monitoring of genetic diversity would not be sufficient to detect the expected slight decline in heterozygosity, due to inadequate sample size and inadequate statistical power.

Response—We agree that DNA-based surveys may offer more information about the population than population size alone, but because the most immediate factors likely to impact the Yellowstone grizzly bear population will come from habitat degradation and loss, and human-caused mortality, we believe addressing these two sources of potential decline is a more appropriate and relevant approach to ongoing conservation efforts in the GYA. The Strategy clearly establishes that augmentation of the Yellowstone population with grizzly bears from other populations will be pursued if no movement is detected between these two populations by 2020 (U.S. Fish and Wildlife Service 2007, p. 37). Based on the best available science, we have concluded that any threats to genetic diversity will be adequately addressed through this approach (Miller and Waits 2003, p. 4338). There is no defined threshold for acceptable heterozygosity values because there is no consensus as to what value would constitute a

biologically significant threat in any specific bear population. We do not propose to monitor changes in genetic diversity, as the statistical power would likely be insufficient to detect changes over time. To monitor genetic isolation, we will establish a repository for all samples from the Yellowstone population to document any bears moving from the NCDE into the GYA. Such movement will be detected by using an ''assignment test,'' which identifies the area from which individuals are most likely to have originated based on their unique genetic signature (Paetkau *et al.* 1995, p. 350; Waser and Strobeck 1998, pp. 43–44; Paetkau *et al.* 2004, pp. 56–57; Proctor *et al.* 2005, pp. 2410–2415).

Issue 6—A few commenters wanted clearly formalized monitoring programs established outside the PCA, and some wanted monitoring programs inside and outside the PCA to determine trends in use of roads and trails, OHV use, and private land development.

Response—Data on private land development are available from the counties. The Park Service and Forest Service monitor traffic volumes on some roads, and the Park Service controls, through its permit system, overnight use of its backcountry sites. We do not know what predictive value those measures would have for grizzly bear management.

Issue 7—One commenter noted that the planned extent of trapping and radio-collaring of bears was unethical, and that this intensive and invasive monitoring approach should be abandoned in favor of keeping the bears listed as threatened.

Response—Since 1982, there has not been a single capture mortality associated with research trapping in the Yellowstone area spanning more than 468 grizzly bear captures (Servheen *et al.* 2004, p. 21). Because of rigorous protocols dictating proper bear capture, handling, and drugging techniques used today, this type of scientific overutilization is not a significant factor impacting the Yellowstone DPS. The Study Team, bear biologists, and researchers will continue implementing these protocols after delisting.

The Act requires us to delist species that no longer meet the definition of threatened or endangered. As discussed in the final rule, the Yellowstone grizzly bear DPS does not meet either of these definitions. We cannot leave the Yellowstone grizzly bear DPS listed in perpetuity, or neglect to gather data on its status. We are required to use the best available science to recover grizzly bears in the Lower 48 States and monitor their status post-delisting. With existing funding and technology, radio-telemetry is the best way to obtain that information. When equivalent or more effective non-invasive techniques become economically available, they will be employed.

Issue 8—A few commenters suggested that Resource Selection Functions be used to monitor habitat rather than the Cumulative Effects Model. Supporters of Resource Selection Functions said they are more grounded in an empirical approach and, therefore, are superior to the Cumulative Effects Model. Some commenters noted that if we are going to rely on the Cumulative Effects Model so heavily, it should be validated and a protocol developed for training additional personnel on how it works.

Response—The use of Resource Selection Functions offers many advantages over the use of the existing Cumulative Effects Model. However, critics point out that estimated Resource Selection Functions are not always proportional to the true probability of use (Keating and Cherry 2004, p. 788). The Cumulative Effects Model represents the best available scientific information in its ability to provide managers with a comparative index of how much habitat values have changed through time. This remains the case even though the validity of all coefficients has not been confirmed. This method will remain in use until the research community arrives at a consensus or a better method to replace the Cumulative Effects Model is developed.

The Cumulative Effects Model is one of many tools used to monitor habitat in the Yellowstone ecosystem. However, it is not the only tool nor is it the dominant tool. The Forest Service is contracting with a computer programmer to make the Cumulative Effects Model a more user friendly, Windows compatible format. The Study Team is committed to using the best scientific methods and models available to them. Use of such models will change as the science changes.

Issue 9—Some commenters recommended that we monitor litter size and cub survival of radio-collared females as indicators of habitat quality and carrying capacity.

Response—The monitoring program does annually monitor litter size and cub survival. These data are compared to indicators of habitat quality such as annual production and availability of major foods.

Issue 10—Some commenters recommended that we monitor human values and attitudes toward grizzly bears in the GYA. This information could contribute substantially to our understanding of human-caused mortality in the GYA and the human dimensions of grizzly bear management.

Response—Some social science research has been conducted in the GYA on attitudes toward grizzly bears (Kellert 1994, pp. 44–45; Responsive Management 2001, pp. 5–14), but we are not sure of its utility in predicting or reducing human-caused mortalities. Our current methods to reduce human-caused grizzly bear mortality by preventing conflicts and addressing conflicts in a systematic, fair, and prompt manner were adequate to accommodate an increasing Yellowstone grizzly bear population during the last two decades. These efforts to address grizzly bear conflicts will continue to comprise the vast majority of fiscal expenditures post delisting (U.S. Fish and Wildlife Service 2007, p. 154).

V. Using the Best Available Science

Issue 1—Many commenters questioned the quality or interpretation of the data used to support the proposed rule. Some offered alternative explanations for the increases in the population estimates that would not require an actual increase in bear numbers while others were satisfied that the best available science and data had been used in the development of the proposed rule.

Response—The peer-reviewed scientific journal articles used in the final rule represent the best available science. The science available on the Yellowstone grizzly bears and their habitat is the best information available on any bear population in the world. None of the alternative explanations offered for the increasing population size were compelling.

Issue 2—Some commenters objected to the use of data that they believed were out-of-date, particularly regarding the spread of diseases and parasites of whitebark pine, and advocated the use of readily available and more recently collected data sets.

Response—The science and data in the proposed rule were the most recent information available when the rule was written and submitted for review and publication in the **Federal Register**. The final rule incorporates newer data on blister rust and mountain pine beetle (see Factor E below) available since the proposed rule was written.

Issue 3—Some commenters specifically critiqued sources that we used in the proposed rule. One described problems associated with the Monograph cited in the proposed rule as Schwartz *et al.* (2005) [note: the Schwartz *et al.* 2005 citation has been

updated in this final rule as Schwartz *et al.* 2006]. Major commenter concerns included—(1) the study sample is not representative of the population, (2) habitat-based demographic analysis is needed, and (3) heterogeneous mortality rates violate assumptions described in the Monograph. Another comment received was about our assertion that nearly 90 percent of females with cubs-of-the-year occur inside the PCA. The commenter noted that because Schwartz *et al.*'s (2002, pp. 204–205; 2006b, pp. 63–64) survey methods focused primarily on sighting bears within the PCA, these publications do not provide reliable information on what portion of grizzly bears spend any time outside the PCA.

Response—The Monograph fully discusses the assumptions that must be satisfied in order to draw the conclusions stated in the document. These assumptions and conclusions in the Monograph went through extensive independent peer review prior to being accepted for publication. Schwartz *et al.* (2006d, pp. 9–12) clearly describe their experimental design to obtain a representative sample. For our discussion about the need for, and the caveats associated with, habitat-based demographic analysis, please see our response to Issue 2 under subheading B above. Regarding the assertion that heterogeneous mortality rates violate assumptions made in the Monograph, we recognize that mortality rates are heterogeneous. The fact that mortality rates are different inside Yellowstone National Park, outside of Yellowstone National Park but inside the PCA, and outside of the PCA was one of the key findings of the Monograph (Haroldson *et al.* 2006b, p. 40). This comment is suggesting that, because mortality rates are different in the three different areas (*i.e.*, heterogeneous), then we must know the movement rates of bears among those areas. Heterogeneous mortality rates do not violate assumptions made in the Monograph because the study sample is representative of bears living in all three areas of differing mortality rates. We consider the Monograph to be the best available scientific data about the demographics of the Yellowstone grizzly bear DPS.

Regarding the sampling method used by Schwartz *et al.* (2002, pp. 204–205; 2006b, pp. 63–64), the monitoring system for females with cubs includes all areas where bears are known to occur, both inside and outside the PCA. Thirty-seven search areas are flown each year, 12 of which are completely or partially outside the PCA. For an example of the effort in observation flights alone, 74 observation flights were flown in 2005, totaling more than 172 hours of flight time and covering all 37 observation areas. There also were more than 411 hours of telemetry flights in 2005. These telemetry flights also contribute to the total sightings of females with cubs. The details of capture efforts both inside and outside the PCA, along with details on these flights and the efforts to sight females with cubs both inside and outside the PCA, are reported in the Study Team's Annual Reports (Haroldson *et al.* 2006a, pp. 4–10; Haroldson 2006b, pp. 11–16; West 2006a, pp. 18–22; West 2006b, pp. 23–24). The Study Team, the Coordinating Committee, and the responsible agencies will continue to use the best available science to update protocols and direct management responses.

Issue 4—A few commenters suggested that we incorporate the findings of Mattson *et al.* (2002) into the discussion about threats to major foods because it ''provides a solid empirical basis for understanding the extent to which grizzly bears will be able to switch to alternative foods when whitebark pine and cutthroat trout decline.''

Response—Mattson *et al.* (2002, p. 32) cautioned that ''it is unclear to what extent bears can compensate by reverting to extant alternate foods'' if any currently important food were to diminish in abundance. We agree that the extent of the bears' potential compensation is unknown. However, the management response to decreases in carrying capacity established by the Strategy and State management plans includes limiting human-caused mortality, enhancing Information and Education efforts in poor food years, actively restoring whitebark pine communities, eradicating lake trout, minimizing disturbance at known army cutworm moth sites, and monitoring female reproductive parameters.

Issue 5—Some commenters disagreed with the levels of secure habitat and road density standards in the Strategy and noted that these were not based on the best available science. They thought that we accepted road densities present in 1998 instead of defining acceptable road densities based on habitat selection by female grizzly bears. Similarly, some commenters thought that our definition of secure habitat did not include any biological requirements (such as food, denning, and breeding grounds) and ignored the minimum core sizes of approximately 1,012 ha (2,500 ac) preferred by female grizzly bears in other ecosystems as documented by Mace *et al.* (1998) and Kasworm (1997).

Response—The secure habitat levels and road densities in the Yellowstone ecosystem are more secure than the required road density and secure habitat in either the NCDE or the Cabinet/Yaak and Selkirk ecosystems. The best measure of the direct effect of habitat on a population is the trajectory of the population. Under the 1998 levels of road density and secure habitat, the Yellowstone grizzly population has been increasing at between 4 and 7 percent per year. From 1986 to 2002, there was a net reduction of more than 1,000 miles of road on the 6 Yellowstone Ecosystem National Forests (inside and outside the PCA) (USDA Forest Service 2006a, p. 200). Inside the PCA on the National Forests, roads were reduced an average of 42.7 miles per year from 1986 to 2002 (USDA Forest Service 2006a, p. 200). Outside the PCA, an average of 40.5 miles of road were decommissioned for the same time period (USDA Forest Service 2006a, p. 200). The 1998 road density levels are lower than previous road densities and are at a level that has allowed the population to increase.

Regarding secure habitat, the average percentage of secure habitat in each of the 40 subunits inside the PCA is 85.6 percent, and 20 of these 40 subunits contain more than 90 percent secure habitat (USDA Forest Service 2006a, pp. 368–369). These levels of secure habitat are higher than the percentage of secure habitat in the home ranges of adult female grizzly bears reported by Mace *et al.* (1996, p. 1400) (Note that the commenter was incorrect in the date of this citation)), where 56 percent of the composite adult female home range was inside secure habitat. We could not find a publication by Kasworm in 1997 that addressed the issue of road densities and female home range size, but believe the commenter was referring to Wakkinen and Kasworm (1997, p. 24), who found that 44 to 68 percent of adult female home range was in secure habitat. Again, the levels of secure habitat in each subunit within the PCA (approximately the size of an annual female's home range) are greater than what was observed in these studies.

The large secure areas of these subunits do include important feeding and denning areas. The secure or core area size was not limited to areas greater than 1,012 ha (2,500 ac) because that would eliminate protection for all secure habitat areas less than this size. We believe that all secure habitats are important and that secure pockets are very important for grizzly bears, particularly in peripheral habitats.

Issue 6—Some commenters noted that there is no social or scientific literature

to support our contention that delisting will build public support and tolerance for grizzly bear conservation.

Response—We agree that there is no scientific literature documenting that delisting would or could build public support and tolerance for grizzly bears. This result is inferred by professional wildlife biologists familiar with local community attitudes in the Yellowstone ecosystem. We have eliminated this rationale from the final rule.

W. Miscellaneous

Issue 1—A few commenters suggested that we could improve the Coordinating Committee structure by including an opportunity for public involvement on proposed actions and including a conservation organization representative.

Response—The Coordinating Committee process is open to the public, and public comment and involvement at meetings is allowed and encouraged. Although a conservation organization representative is not formally a member of the Coordinating Committee, all conservation organization representatives will continue to be able to comment and be involved in Coordinating Committee meetings.

Issue 2—Numerous commenters suggested that we take a more conservative or precautionary management approach. Some cited Schwartz *et al.* (2006e, p. 62) as supporting this idea, especially in relation to long-term, irreversible habitat alterations such as private land development.

Response—The Reassessing Methods Document and its Supplement (Interagency Grizzly Bear Study Team 2005, pp. 6, 20, 35; Interagency Grizzly Bear Study Team 2006, p. 15–16) advocate a precautionary management approach by establishing biologically sustainable mortality limits to ensure that the population trajectory of the Yellowstone grizzly bear DPS is stable to increasing. The adaptive management system in the Strategy incorporates the results from intensive monitoring of population vital rates, habitat standards, and major foods into management decisions.

Issue 3—Many comments received did not pertain directly to this decision or were outside of our scope and authority. These included comments opposing all livestock grazing on public lands, opposing the sale of public lands proposed in the Fiscal Year 2007 President's budget, favoring the need to switch to alternative energy sources, and opposing or supporting Act reform. Also included was a comment proposing the transfer of public lands in the PCA from the USDA Forest Service and BLM to the National Park Service. A large number of commenters expressed some degree of mistrust about the motivations behind delisting and accused us of catering to the oil and gas industry, timber industry, developers, livestock owners, and hunting interests. Numerous commenters also expressed value-based reasons as to why they opposed delisting, such as animal rights, spiritual importance, the grizzly bear as a national treasure and symbol of wilderness, and that humans should behave as caretakers and stewards of the grizzly bear, not as pillagers of its habitat.

Response—Our decision to delist the Yellowstone DPS is based solely on our assessment of the best scientific and commercial data available, which indicate that the population is neither threatened nor endangered. Otherwise, these comments are either not relevant to the management decision or are outside the scope and authority of the final rule.

Summary of Peer Review Comments

In accordance with the Service's 1994 Peer Review policy (59 FR 34270, July 1, 1994) and the peer review requirements of the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review (OMB 2004), the Service selected and solicited peer review of the proposed rule (70 FR 69854, November 17, 2005) from nine independent scientific experts. Eight of the nine reviewers accepted the opportunity to review the proposed rule and answered questions pertaining to the logic of our assumptions, arguments, and conclusions. These reviewers were experienced bear biologists and researchers who do not work for the Service, although two of the reviewers are employed by the Department of the Interior, U.S. Geological Survey. They were chosen based on their direct research experience with bears and their experience with the conservation and management of bears. The names and affiliations of the reviewers are—(1) Dr. Joseph D. Clark, Research Ecologist, U.S. Geological Survey, Southern Appalachian Field Branch; (2) Dr. Piero Genovesi, Italian National Wildlife Institute, Italy; (3) Dr. Steven Herrero, Professor Emeritus of Environmental Science, University of Calgary, Canada; (4) Dr. Djuro Huber, Biology Department, University of Zagreb, Croatia; (5) Dr. Bruce McLellan, Wildlife Research Ecologist, British Columbia Ministry of Forests Research Branch, Canada; (6) Dr. Gordon Stenhouse, Alberta Sustainable Resource Development and Foothills Model Forest Grizzly Bear Research Program, Canada; (7) Dr. Jon Swenson, Department of Ecology and Natural Resource Management, Norwegian University of Life Sciences, Norway; and (8) Dr. Frank T. van Manen, Research Ecologist, U.S. Geological Survey, Southern Appalachian Field Branch.

Each reviewer was paid $500 (U.S.) for their analysis (with the exception of those who also work for the U.S. Government, who were not paid for their services). The purpose of seeking independent peer review is to ensure that the best biological and commercial data are being used in the decision-making process, as well as to ensure that reviews by recognized experts are incorporated into the review process of the rulemakings. Peer reviewers were asked to consider, but not limit their comments, to the following questions and provide any other relevant comments, criticisms, or ideas—(1) Does the proposed rule provide adequate review and analysis of the factors relating to the persistence of the grizzly bear population in the GYA (demographics, habitat, adequate regulatory mechanisms, disease and predation, and genetics)?; (2) Is our establishment of this population as a DPS logical and adequate? Specifically, are our arguments pertaining to the discreteness and significance of the population sufficient according to the DPS policy, as described in the rule?; (3) Are our assumptions and definition of suitable habitat logical and adequate?; (4) Are the conclusions we reach logical and supported by the evidence we provide?; (5) Are our conclusions relating to food resources logical and adequate?; (6) Is the post-delisting monitoring program for habitat and population criteria logical and adequate to ensure survival of this population of grizzly bears in the foreseeable future?; and (7) Did we include all the necessary and pertinent literature to support our assumptions/arguments/conclusions?

Peer reviewers provided individual, written responses during the public comment period. Copies of individual peer review responses are available upon request (see **ADDRESSES** section above). The issues raised by the peer reviewers are summarized and responded to below. We have grouped similar comments together under major headings that correspond to the questions we asked peer reviewers and summarized concerns into categories called ''Issues,'' which are followed by our ''Responses.'' Not all peer reviewers commented on all questions. The

comments we received from peer reviewers generally reflected their areas of expertise, so when we discuss specific issues below, we are only summarizing those comments we received. The views discussed do not necessarily reflect all of the peer reviewers' opinions, just the opinions of the reviewers who responded on that particular issue.

Several reviewers also commented on the Reassessing Methods Document. A summary of those issues brought up by the reviewers, as well as responses to their concerns, were incorporated into the final Reassessing Methods Document as an appendix.

A. Does the proposed rule provide adequate review and analysis of the factors relating to the persistence of the grizzly bear population in the GYA?

Issue 1—In general, the peer reviewers believed the Service did an adequate job of discussing the relevant factors related to the persistence of the Yellowstone grizzly bear DPS. One reviewer noted that the Yellowstone DPS does not meet either the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (the first stage toward consideration for protection under the Canadian Species at Risk Act) or the World Conservation Union (IUCN) standards for a non-threatened species. However, they further noted that because the threats to habitat are well understood and manageable (at least in the short-term) and the population has been expanding in size and distribution, delisting may be appropriate so long as the laws, plans, and strategies that are identified in the proposed rule do not get diluted after delisting.

Response—While we view the IUCN and COSEWIC standards as informative in our decision-making process, the Act employs different standards for listing consideration, which are considered below. On the whole, we agree that the laws, plans, and strategies will provide for robust habitat protection measures; therefore, allowing the population to continue to expand and thrive. The Strategy will guide post-delisting management of the Yellowstone grizzly bear DPS. The plans described in the Strategy can change after delisting only if new science becomes available and through agreement within the Coordinating Committee (U.S. Fish and Wildlife Service 2007, p. 63). Any future changes to the management documents for the Yellowstone grizzly bear population will be modified in an adaptive management framework as a result of accumulated knowledge about grizzly bear management.

Issue 2—The reviewers who commented on disease and predation agreed that disease is not an issue for grizzly bear populations. Regarding human-caused predation (i.e., mortality), some reviewers recommended that the Service explore the potential impacts of a hunting season that targeted adult males. It is possible that decreased cub survival through sexually selected infanticide may affect population trajectory. One reviewer also suggested that the final rule be more clear that although the impact of hunting to the total population is negligible, some local populations of bears may be reduced. One reviewer also recommended clarification about whether the penalty for poaching a grizzly bear will be the same as before delisting.

Response—Sexually selected infanticide is the practice by which a territory vacated by an adult male is filled by a newly arrived subadult male, which then kills any cubs in the territory (Swenson *et al.* 1997b, p. 450). That behavior can reduce the population growth rate through cub mortality (Swenson *et al.* 1997b, p. 450). It has been documented in two European brown bear populations (Swenson *et al.* 2001, pp 75–77), and instances of infanticide by North American grizzly bears of both sexes also have been documented (McLellan 1994, pp.15–16). However, Miller *et al.* (2003, p. 144) and McLellan (2005, pp. 153–154) could not find evidence of population level effects of sexually selected infanticide in North American grizzly populations. If sport hunting preferentially removes adult male bears, and if sexually selected infanticide is common, sport hunting might result in some reduction in cub survival in localized areas. However, this would likely have little impact on overall population growth rate because hunting mortality on males would be limited in numbers and extent.

The States have control over when and where a grizzly bear permit holder may hunt, so the targeting of bears in specific areas, or even specific individual bears, is possible. Sport hunting could be used in that way as a compensatory mortality source, by killing bears that would otherwise have to be removed by management action. However, hunting will be allowed only as long as the overall mortality limits are not exceeded.

Each of the three States will establish penalties for poaching grizzly bears in their jurisdictions, and those penalties may not be the same as before delisting. Judges have discretion to impose fines under State law. Predicting the average poaching fine is not possible, due to the variety of circumstances surrounding a poaching incident, numerous State laws that may apply, and various punishments available under those State laws. We have been assured by State wildlife agencies that poaching incidents will continue to be investigated and prosecuted under State law.

Issue 3—A few reviewers commented on the proposed rule's discussion of grizzly bear/human conflicts. One reviewer thought that preventing access to human foods by bears should be better addressed. Another reviewer recommended that ''Emphasis should be placed on managing human/bear conflicts on the interface of bear habitat and humans to ensure that mortality there does not exceed recruitment of the population as a whole.''

Response—We agree that preventing grizzly bear habituation to humans and their foods is a priority. More than two-thirds of all suggested funding to implement the Strategy is designated for managing conflicts and outreach efforts to minimize conflicts (U.S. Fish and Wildlife Service 2007, p. 154). All suitable habitat on GYA National Forests will have food storage orders in effect by 2008. Outreach efforts are directed toward decreasing attractants on private lands. The sustainable mortality limits will ensure that mortality in the outer zone of grizzly occupancy (those bears in closest proximity to private land) does not exceed the recruitment of the population as a whole.

Issue 4—Although genetic isolation should be a consideration, one reviewer noted that, ''Within the foreseeable future, demographic or habitat threats are much more likely than a genetic threat.'' The reviewers endorsed natural population connectivity and stated that these opportunities should not decrease after delisting. Connectivity would increase the chances of long-term population persistence and would be a good buffer against the uncertainties surrounding major foods. One reviewer noted that, ideally, connectivity would be established before delisting occurred. Finally, one reviewer suggested that the Service analyze the ramifications of delisting on the ability to naturally recover the Bitterroot Ecosystem and to link the Yellowstone population with the NCDE.

Response—We agree that demographic or habitat threats are more likely a threat than genetic factors in the foreseeable future, and that natural connectivity is desirable. Efforts to promote connectivity between existing populations will continue after delisting

as these programs are independent of the delisting of the GYA population. Due to the habitat protections, population standards, mortality control, outreach efforts, and the adaptive management approach described in the Strategy, we do not believe isolation is a threat to the Yellowstone grizzly bear population and, therefore, does not preclude delisting. Delisting of the Yellowstone grizzly bear population should have no effect on the potential for natural recovery of grizzly bears through the Bitterroot Ecosystem. Both the GYA and NCDE populations are increasing in size and expanding their geographical ranges, increasing the likelihood of eventual dispersal to the Bitterroot Ecosystem.

Issue 5—One reviewer believed that one of the biggest threats to grizzly bear habitat post-delisting ''* * *will come from those who want to use or develop important grizzly bear habitat and who feel that their action is such a small part of the whole that it doesn't matter.'' He recommended that the Service more fully consider and discuss cumulative impacts of multiple projects.

Response—The intent of the 1998 habitat baseline is to prevent or mitigate those cumulative effects on bear habitat within the PCA, where 84 to 90 percent of the females with cubs occur. By maintaining the amount of secure habitat and restricting increases in the total mileage of roads, the number of developed sites, and livestock allotments, the PCA will be able to support a stable to increasing bear population. The USDA Forest Service will continue to apply and improve the Cumulative Effects Model and run this model at least every 5 years to assess the cumulative effects of development on bears. The Study Team will continue to pursue improved methods to assess cumulative impacts.

Outside the PCA, nearly 60 percent of all suitable habitat is either Designated Wilderness Area, Wilderness Study Area, or Inventoried Roadless Area. These designations will prevent many extractive projects from occurring (see Factor D below). All projects on Federal lands are required to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) process, which includes a section on the cumulative effects of the proposed project. Any NEPA process for a project on National Forest lands also will include an analysis of the impacts of the proposed project on USDA Forest Service species of concern, which will include the grizzly bear upon delisting (USDA Forest Service 2006b, p. 26).

Issue 6—One reviewer noted, regarding regulatory mechanisms, only Montana appears to possess a law that mentions the importance of research and the best-available science to guide grizzly bear management, and that Idaho and Wyoming should be encouraged to adopt a similar law. One reviewer asked if the Strategy will have the regulatory power to ensure that signatories implement management decisions and that resources are available.

Response—We have no authority to compel the States to enact laws, nor do we believe it is necessary. The Strategy, signed by all three affected States, is based on the best available science to guide Yellowstone grizzly bear management. The adaptive management approach described in the Strategy ensures that decisions are to be made based upon the best available science. While the Strategy cannot legally compel any of the signatories to implement management policies or obligate funding, the various Federal agencies' and State governments' signatures on the Strategy clearly indicate their intention to manage grizzly bears according to the Strategy.

Issue 7—One reviewer commented that the proposed rule focused solely on current status and how future conditions will be monitored but failed to discuss carrying capacity of the GYA and ''* * * what effect population expansion may have on a distinct population unit that has clear limits to range or habitat expansion.'' He recommended that the Study Team start to consider this type of issue.

Response—Schwartz *et al.* (2006c, p. 29) discuss the Yellowstone grizzly bear population's growth towards carrying capacity. Carrying capacity has probably already been reached inside Yellowstone National Park (Schwartz *et al.* 2006c, p. 29), and its effect has been to reduce cub survival to levels found in grizzly bear populations at carrying capacity in Alaska. It does not appear that carrying capacity has been reached outside of Yellowstone National Park (Schwartz *et al.* 2006c, p. 29). There are 14,554 sq km (5,619 sq mi) of suitable habitat in the GYA that are currently unoccupied by grizzly bears. This habitat, coupled with the sustainable mortality limits, will allow the Yellowstone grizzly bear population to continue to increase and expand as per the State management plans.

At some point in the future, monitoring data may demonstrate that carrying capacity has been reached throughout the GYA and that the sustainable mortality limits must be revised to accommodate increasing natural mortality or to stabilize the population. The Study Team will reevaluate demographic parameters including reproductive rate, survival rate, annual population growth rate (lambda), stable age distribution, and transition probabilities—every 8 to 10 years; as directed by a violation of the population standards (for a complete list of all population standards and triggers that are considered violations, see Factor D below); or at the request of the Coordinating Committee. During these formal evaluations, any impacts that density dependence or lowered carrying capacity may have will be identified and addressed through adjustments to methods used to estimate population size, sustainable mortality, unknown and unreported mortality, or other management recommendations. The application of adaptive management will allow prompt application of new data or techniques to management decisions. Future conditions may not be like past conditions and the monitoring and adaptive management systems in place are designed to respond to changes that occur.

B. Is our establishment of this population as a distinct population segment logical and adequate?

Issue 1—Most of the reviewers agreed with our DPS analysis and stated that, due to its discreteness and significance, the GYA grizzly bear population warrants DPS status. Some reviewers did point out that DPS designation is biologically justified but highlights one of the major problems faced by the Yellowstone grizzly bear population is its isolation. Gene flow must be attained, either through natural connectivity or augmentation. One reviewer also stated that DPS status can complicate future augmentation efforts if the source population is not similar enough to the recipient population.

Response—As noted in the final rule, we agree that the Yellowstone population is both discrete and significant, thus qualifying as a DPS under our policy. Regarding isolation of the Yellowstone grizzly bear population, those potential threats are related to genetic concerns and changes in the population's habitat. Based on the best available science (Miller and Waits 2003, p. 4338), the Service concludes that the genetic diversity of the Yellowstone grizzly bear population will be adequately maintained by the immigration or relocation of one to two effective migrants from the NCDE every 10 years. This movement of grizzly bears between ecosystems may occur naturally or through management intervention. Regardless of the method, the Service is confident that genetic impoverishment will not threaten the Yellowstone grizzly bear population.

The source population for augmentation, if augmentation becomes necessary, will be the NCDE population. The NCDE bears are those most closely related to the Yellowstone grizzly bear DPS, having been separated for roughly 100 years (Miller and Waits 2003, p. 4334). Offspring of individuals from these two populations are unlikely to experience outbreeding depression. Limited gene flow, as suggested here, would not compromise the required level of discreteness for DPS status, as the DPS policy does not require complete separation of one DPS from other populations, but instead requires ''marked separation.''

Issue 2—Regarding significance, a few of the reviewers responded that there are other populations of grizzlies that have great access to ungulates and whitebark pine seeds but that diets have not been quantified in these areas. One reviewer questioned just how unique the ecological setting of the GYA really is.

Response—While we recognize that there are populations around the world that have access to large ungulates (Canada, Alaska, northeast Asia) and whitebark pine seeds (Canada), what is unusual and unique about the GYA is that there is relatively high use of ungulate meat. Also, although several berry-producing shrubs occur in the area, these are relatively limited by climatic factors and most grizzly bears in the GYA do not rely on berries as a significant portion of their diets. It is this combination of reliance on large mammals and whitebark pine seeds, while having little opportunity to feed on berries, which makes the ecological setting of the GYA unusual, unique, and significant, as none of these factors alone differentiates the GYA from other ecosystems.

Issue 3—One reviewer thought that the Service should reevaluate the status of all of the grizzly bear populations in the lower 48 simultaneously with the Yellowstone assessment.

Response—The Service intends to initiate a 5-year review of grizzly bear populations in the conterminous States outside of the Yellowstone DPS, based on additional scientific information that is currently being collected and analyzed. This review will likely be initiated a few months after the publication of this final rule.

C. Are our assumptions and definition of suitable habitat logical and adequate?

Issue 1—One reviewer thought it would be helpful for the Service to re-categorize and include an analysis of suitable habitat, potentially suitable habitat (if management decisions favored grizzly bears), and unsuitable habitat, stating that this may help direct management decisions in the future.

Response—In response to this comment and several others received by the general public, we have conducted additional analyses to determine how much potentially suitable habitat there is inside the DPS boundaries that could be made suitable through management actions. We found that an additional 9,637 sq km (3,720 sq mi) of National Forest lands (including the Salt River and Palisades Mountain Range) could be made suitable by eliminating all sheep grazing allotments and existing oil and gas developments. These areas are not currently suitable and would require elimination of existing management activities to make them suitable. Such an action is not biologically necessary to maintain the recovered status of the Yellowstone grizzly bear DPS. These areas do not constitute a significant portion of the range. Please see our response to Issue 2 under subheading G in the Summary of Public Comments section above for additional discussion about this concern.

Issue 2—One reviewer agreed with the first two criteria for suitable habitat but questioned the third criterion (having low mortality risk as indicated through reasonable and manageable levels of grizzly bear/human conflicts). This reviewer suggested that the Service conduct ''Additional work on mortality risk modeling in suitable habitats (Nielsen *et al.* 2006, pp. 220–222) [which] would serve as a valuable supplement to the tracking of conflicts and would have the added benefit of providing a system that could aid in conflict reduction.''

Response—The Service agrees that such additional efforts to assess mortality risk in suitable habitats would be useful and supports such work. The Study Team is currently developing habitat-based risk analysis models that will provide insight into mortality risk across the GYA landscape. One management recommendation (Schwartz *et al.* 2006e, p. 62) was to obtain funds to explore more spatially explicit models beyond the three political zones (*i.e.*, inside Yellowstone National Park, inside the recovery zone but outside Yellowstone National Park, and outside the recovery zone) that were addressed. In fact, before Schwartz *et al.* (2006e) was printed, the Study Team submitted a proposal to address this recommendation and obtained funding for this project. It took more than 1.5 years to create the required spatial layers needed for the analyses. The Study Team then began to construct models looking at hazards on the landscape and how they affect grizzly bear survival. These models consider foods, habitat productivity, and human impacts to the landscape. As part of the adaptive management approach in the Strategy, the Study Team intends to link these hazard models with similar models of reproduction to develop models predicting population change on the landscape. Combined, these models will yield a projection of population viability. These efforts will continuously be updated and improved as new methods and information become available.

The Study Team also analyzes the location of grizzly bear/human conflicts and mortalities in relation to land ownership and type of conflict in their annual reports. In this way, the Study Team identifies ''hotspot'' conflict areas in which I & E and prevention efforts are likely to be most beneficial.

Issue 3—A few reviewers questioned the simplicity of the Service's definition of suitable habitat. These reviewers felt that because the Service and the Study Team have abundant data regarding habitat use, the Service should have employed a more empirical definition ''* * * using data-based, statistical techniques, such as logistic regression (e.g., Mladenoff *et al.* 1995) or Mahalanobis distance (*e.g.*, Thatcher *et al.* 2006).''

Response—We thought it was adequate to use a more generalized, coarse-scale interpretation of what habitat would meet grizzly bear needs. Other models predicting where unoccupied suitable grizzly bear habitat occurs within the GYA produced results similar to ours (Noss *et al.* 2002, p. 903; Merrill and Mattson 2003, pp. 182, 184). The results of our analysis agree with previous studies that have identified the Wind River Mountains and the Centennial Mountains as potentially suitable, but currently unoccupied habitat.

Issue 4—Several reviewers felt that the Service should include some measure of habitat quality in its definition because it also is important to understand other health parameters in suitable habitat, such as body condition, movement rates, habitat use, and reproductive function. A couple of reviewers thought habitat quality was particularly important to include in any definition of suitable habitat in light of climate change and possible shifts in habitat use to respond to declines in food resources. If bears show major shifts in habitat use in response to changing food availability, suitable habitat may need to be redefined.

Response—We used the Middle Rockies Ecoregion as a surrogate for

habitat quality/capacity. This approach is supported by many previous studies which have found that mountainous regions generally possess the habitat components necessary for grizzly bear persistence, including hiding cover, topographic variation necessary to ensure a wide variety of seasonal foods, steep slopes used for denning, and remoteness from humans (Craighead 1980, pp. 8–13; Knight 1980, pp. 1–3; Judd *et al.* 1986, pp. 114–115; Peek *et al.* 1987, 160–161; Aune and Kasworm 1989, pp. 29–58; Merrill *et al.* 1999, pp. 233–235; Pease and Mattson 1999, p. 969; Linnell *et al.* 2000, pp. 403–405; Mattson and Merrill 2002, p. 1128). We have not assigned numerical quality scores to habitats based on grizzly bear body condition or productivity because of the uncertainties surrounding such calculations.

D. Are the conclusions we reach logical and supported by the evidence we provide?

Issue 1—A couple of reviewers criticized our contention that hunted grizzly bear populations may experience lower incidences of vandal killing, and one reviewer noted that data he had collected in Alberta since 1999 do not support the conclusion that sport hunting of grizzly bears lowers mortality from poaching.

Response—The reviewer's evidence convinced us to conclude that sport hunting of grizzly bears may not lower mortality from poaching. We have removed any such wording and logic from this final rule.

Issue 2—One reviewer suggested that we could strengthen our assumptions about secure habitat serving adequately as the primary habitat component monitored, if we expanded the definition of secure habitat to include a probability of grizzly bear occurrence (through ongoing monitoring of food resources in space and time) coupled with mortality risk (Nielsen *et al.* 2006, pp. 220–222)

Response—The negative impacts of humans on grizzly bear survival and habitat use are well documented (Harding and Nagy 1980, p. 278; McLellan and Shackleton 1988, pp. 458–459; Aune and Kasworm 1989, pp. 83–103; McLellan 1989, pp. 1862–1864; McLellan and Shackleton 1989, pp. 377–378; Mattson 1990, pp. 41–44; Mattson and Knight 1991, pp. 9–11; Mattson *et al.* 1992, pp. 436–438; Mace *et al.* 1996, p. 1403; McLellan *et al.* 1999, pp. 914–916; White *et al.* 1999, p. 150; Woodroffe 2000, pp. 166–168; Boyce *et al.* 2001, p. 34; Johnson *et al.* 2004, p. 976). In light of this, the importance of secure habitat, simply defined as a function of distance from roads, is indisputable. Although we do not include any prediction of where grizzly bears may occur or what their mortality risk in identified secure habitat might be, the Study Team will monitor food resources and grizzly bear mortalities in the GYA annually.

E. Are our conclusions relating to food resources logical and adequate?

Issue 1—Many reviewers thought that the proposed rule was too optimistic in its discussion of how bears may respond to declines in major foods. They noted that although bears display some foraging plasticity, the extent to which this behavior might buffer loss of one of the four major foods is not known. In contrast, one reviewer thought that food availability was of minor importance in comparison to other human influences such as roads and human-caused mortality and stated that preventing grizzly bear use of human garbage and food will become increasingly important if traditional foods decrease.

Response—While we agree that the extent to which grizzly bears might be able to compensate for the loss of one of the four major foods is unknown, the rule reflects the best scientific and commercial data available. Future food source availability and the possible grizzly bear reaction to those possible future changes are discussed under Factor E below and in the Summary to Public Comments' sections J, K, L, and M above. We also agree that human-caused mortality is probably the major factor limiting grizzly populations, although mortality can be mediated by food availability (Mattson *et al.* 1992, p. 432). The Study Team will continue to monitor major food abundance and grizzly bear conflicts and mortalities. The combination of results and Study Team analyses from these multiple monitoring indices on foods, bear vital rates, and bear/human conflicts will allow managers to respond to changes as necessary. Managers will respond to poor food years with reductions in allowable mortalities and with increased I & E efforts that forewarn the public about the increased potential for grizzly bear/human conflicts.

Issue 2—The reviewers thought it was important to continue monitoring the abundance and distribution of the four major food sources. One reviewer suggested that the Service use statistical power analyses "* * * to determine what level of change in each food source can be detected with these surveys' and to make adjustments to improve the effectiveness and efficiency of the food monitoring techniques. Another reviewer recommended that the Service monitor reproductive rates and define threshold values for these as they might be more sensitive to food fluctuations than mortality rates would be. One reviewer suggested that non-invasive methods could be used to monitor reproductive hormone cycles in adult female bears that may tie directly to habitat and landscape conditions.

Response—The Greater Yellowstone Whitebark Pine Monitoring Working Group (2005, pp. 98–107) worked closely with statisticians to ensure the best possible sampling design in terms of statistical power and ecological inference. They have established over 70 transects throughout the GYA to assess the status of whitebark pine. The Study Team also documents annual whitebark pine cone production through monitoring of 19 transects inside the PCA. The Study Team has found that its surveys of whitebark pine cone production can effectively predict the magnitude of the number of management actions taken on grizzly bears during each crop year (Haroldson and Podruzny 2006, p. 45). The Study Team's research has resulted in a tentative threshold value, a mean of 20 cones per tree, which predicts near exclusive use of cones by bears from August through October, and also predicts that management actions will be reduced in such years. This level of predictive ability to detect this effect is adequate for management purposes. Whitebark pine cone production fluctuates from year to year, as an evolved strategy on the part of the trees to avoid seed parasitism and predation. Human management cannot guarantee a large cone crop.

Abundances of the other three major foods (ungulate carcasses, cutthroat trout, and army cutworm moths) have not been reliable predictors of grizzly bear abundance, fecundity, mortality, or management activity. All have fluctuated in abundance during the period in which the grizzly population has continued to increase.

Although adult female survival is the factor most important to population trajectory, the Study Team also monitors reproductive rates to obtain a complete picture of the overall health of the grizzly bear population. Annually, the Study Team monitors litter size through counts of females with cubs-of-the-year. In addition, every 8 to 10 years, the Study Team will recalculate litter size and cub survival based on the radio-collared sample of female grizzly bears. The Study Team does not currently monitor reproductive hormone cycles but will consider its use in the future as it becomes more feasible and cost-effective.

Issue 3—One reviewer thought the Service should make it clear that the four major foods and their potential declines were not included in any models of future population trajectory.

Response—The potential abundances of the four major foods have not been employed in any of the PVAs predicting future population trajectory. The reasons for this and our progress toward this goal are discussed above in our response to Issue 2 under subheading B in the Summary of Public Comments section of this final rule.

Issue 4—Two reviewers thought the Service should analyze the implications of the recently introduced wolf populations on the availability of ungulates to Yellowstone grizzly bears.

Response—Recent models and investigations in the field suggest that reintroduced wolves have had little effect on ungulate availability to grizzly bears in the GYA (Wilmers *et al.* 2003a, pp. 914–915; Barber *et al.* 2005, p. 43; Vucetich *et al.* 2005, p. 259). This issue is discussed in more detail under Factor E below.

F. Is the post-delisting monitoring program for habitat and population criteria logical and adequate to ensure survival of this population of grizzly bears in the foreseeable future?

Issue 1—A couple of the reviewers commented that a clear, unequivocal set of criteria for automatic relisting should be established to reduce process-based uncertainty. One reviewer stated that, given past controversy surrounding listing decisions, relisting cannot be regarded as a potential solution to future problems.

Response—The Act contains no provision for automatic relisting of a species based on quantitative criteria. If, at any time, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. Any such relisting would be based on the definition of threatened or endangered and the 5-factor analysis. A petition for relisting the Yellowstone grizzly bear DPS would have to go through the same procedure as a species newly petitioned for listing. However, the Service can issue an emergency listing rule independent of the petition process or in response to a petition, as it did for the Mojave population of the desert tortoise (*Gopherus agassizii*) (54 FR 32326, August 4, 1989). The Service would then have 240 days to complete a conventional listing rule before the protections of the emergency rule expire. The Service believes the process described in this final rule is sufficient to ensure that relisting will be carried out if necessary, based upon the best available science.

Issue 2—One reviewer stated that monitoring is not sufficient if the results of investigations are not promptly incorporated in policy and management, and that this type of rapid response requires availability of contingency funds, clear roles and authorities, and the power to impose the necessary actions on all involved partners. One reviewer believes that since the effectiveness of the monitoring program depended ''* * * upon adequate funding to provide research results with scientifically acceptable confidence limits,'' the monitoring plan should have secure funding for at least 5 to 10 years before delisting occurs.

Response—The signatories to the Strategy will practice adaptive management by incorporating the findings of the monitoring programs into management of the GYA grizzly bear population. The Federal Government does not have the statutory or constitutional authority to compel the States or individuals to participate in managing grizzly bears if they choose not to, although the responsible agencies' signatures on the Strategy indicate their willingness to manage the Yellowstone grizzly bear DPS. Funding for government programs is never certain at any level, but the funding to support the grizzly bear and grizzly bear habitat management activities of the various Federal and State agencies has been consistently obligated for the past 30 years.

Issue 3—One reviewer encouraged the Service to investigate human dimensions with a protocol that would allow quantification of changes in the attitudes of the general public, farmers, hunters, and other stakeholders.

Response—Although we agree that the values people hold about grizzly bears may provide some insight into poaching incidents and successful management approaches, due to the complications associated with quantifying shifts in public attitudes, we do not see such research as a priority essential to grizzly bear conservation in the GYA. Instead, we believe successful conservation of the Yellowstone grizzly bear should focus on reducing human-caused mortality, protecting habitat, preventing grizzly bear/human conflicts, and monitoring demographic and habitat parameters. That said, in 2001, the State of Wyoming contracted a private business to survey its residents about their attitudes toward grizzly bear management (Responsive Management 2001, p. i). This information was used in the development of the Wyoming State grizzly bear management plan.

Issue 4—The reviewers supported our post-delisting monitoring plan to maintain a minimum of 25 adult female bears distributed throughout the GYA with radio collars at all times, to examine the trends and welfare of the population. One reviewer recommended to us that such research trapping and radio-collaring should strive to minimize the number of capture events per individual to minimize stress, perhaps by using radio transmitters that have a longer operational life.

Response—The minimization of stress during capture events is always a priority for research-trapped bears. A strict protocol (Jonkel 1993, pp. 1–4) is followed by the Study Team when trapping grizzly bears for research purposes. In addition, the latest veterinary medical research is incorporated into the Study Team's protocol when they renew their veterinary permit annually. These protocols are designed to minimize restraint time, minimize capture-related stress, monitor the health of captured animals, administer appropriate levels of anesthesia, and minimize the duration of anesthesia through the use of appropriate antagonists. As radio-telemetry technology improves, the Study Team will incorporate those advances into the monitoring program. If collars can be safely retained for longer periods, the Study Team will make use of improved battery life as these advancements are made. As collar life increases, the total number of capture events will decrease.

Issue 5—One reviewer believes that the Service should state clearly how often important population parameters such as female survival, litter size, litter interval, population growth rates (lambda), sex ratios, and age ratios will be calculated.

Response—These parameters will be recalculated every 8 to 10 years based on the radio-collared sample (Interagency Grizzly Bear Study Team 2005, p. 45) or as required by a Biology and Monitoring Review triggered by a violation of a habitat or population criterion.

Issue 6—Some reviewers suggested that a DNA-based population estimate be conducted at least once to check the estimate given by using the methods described in the Reassessing Methods Document. Some believe that the Service should integrate large-scale, non-invasive genetic sampling into future monitoring protocol since the data gathered during such sampling provides much more information than just a population estimate. Genetic

sampling also can provide reliable estimates of sex ratio, reproductive success, effective population size, dispersal, allelic diversity, heterozygosity, and inbreeding levels.

Response—The current cost of a one-time, point population estimate using DNA is roughly $3.5 million to $5 million (Interagency Grizzly Bear Study Team 2005, p. 12). The Yellowstone Ecosystem Subcommittee decided in 2001 that such funds would be spent more effectively on other management actions. The Service and the Study Team recognize the need to improve methods to estimate population size and calculate sustainable mortality limits and will continue to consider ways in which this might be accomplished. As the costs associated with DNA amplification and analysis decrease with time, the Study Team may revisit this possibility. The Study Team will continue to take DNA samples opportunistically from all bears trapped for research or management and all known mortalities so that future analyses of other genetic or demographic parameters are possible. For now, as long as mortality continues to remain within the sustainable mortality limits as evidenced by a Chao2 estimate of at least 48 females with cubs of the year, there are no data to indicate that this method is inadequate to manage for a stable to increasing Yellowstone grizzly bear population.

Issue 7—Several reviewers thought the 1998 baseline gives reasonable assurance that grizzly bear habitat needs within the PCA will continue to be met. One reviewer commented that the assumption that 1998 habitat conditions allowed the population to increase by 4 to 7 percent is ''largely valid,'' but questioned the Service's choice of the year 1998 and the biological justification behind the criteria for acceptable road densities and levels of secure habitat. A couple of reviewers agreed with the Service that, currently, there is no known way to deductively calculate habitat quality for grizzly bears (e.g., security) and that the use of surrogates (e.g., levels of secure habitat) was appropriate, but reminded us that ''If we are monitoring the wrong surrogates, however, there is no guarantee that the true 1998 habitat baseline will be met. We should acknowledge this and continue to strive for better measures of what constitutes true habitat quality for bears.''

Response—The year 1998 was chosen because we know that levels of secure habitat and site developments had been roughly the same during the previous 10 years (USDA Forest Service 2004, p. 27), and that, during these years, the population was increasing (Eberhardt and Knight 1996, p. 419; Harris *et al.* 2006, p. 48). Therefore, the selection of any other year between 1988 and 1998 would have resulted in approximately the same baseline values for roads and developed sites but the selection of the latter date allowed improvements made since 1988 to be included in the baseline. To address the possibility that we could be monitoring the ''wrong surrogates,'' the responsible agencies also will be monitoring a suite of other factors including habitat parameters, population criteria, mortalities, and conflicts. Our partners will improve the technique for the monitoring of habitat as better methods become available and as the relationships between habitat quality and vital rates are better documented.

Issue 8—A couple of reviewers suggested that in order to truly maintain 1998 conditions, the level of human use also must be maintained at 1998 levels because the intensity of human use is the driving factor behind security, not the sheer number of developed sites and roads on the landscape; intensity of use will only increase as the human population in the area increases. One reviewer suggested that the Service create limits on the numbers of visitors (visitors/days) allowed in Yellowstone National Park. He believes that this limitation on human activities is especially important in light of uncertainties surrounding food sources. One reviewer also noted that, in light of potential decreases in important foods, it would be preferable to institute habitat guidelines that are more restrictive toward resource exploitation than the 1998 baseline.

Response—Human use of the GYA, as measured by the annual number of people visiting Yellowstone National Park, has increased since the grizzly was listed as threatened in 1975 (Gunther 2000, p. 48). During the 1970s, the average annual number of people visiting the Park was 2,243,737. In the 1990s, this number was 3,023,916 (Gunther 2000, p. 48). However, during that period, the grizzly population also has increased, and the bears within Yellowstone National Park appear to have reached the carrying capacity of the Park habitat (Schwartz *et al.* 2006c, p. 29). The Service considers the establishment of habitat thresholds for human population growth and recreation to be unrealistic and feels that the 1998 baseline will address these issues adequately through access management and limitations on site development. Using the adaptive management approach described in the Strategy, management agencies will respond with adequate restrictions and enforcement if recreation on public lands due to increased human populations in the GYA becomes detrimental to the Yellowstone grizzly bear population.

Resource extraction in grizzly bear habitat is primarily timber harvest, and it has declined. Habitat quality, as measured by road density and timber harvest, has increased due to declines in these activities in grizzly habitat. Timber harvest volumes and road construction have declined since the mid-1990s. Under the 1998 level of secure habitat, the Yellowstone grizzly bear population has been increasing at between 4 to 7 percent per year (Harris *et al.* 2006, p. 48). From 1986 to 2002 there has been a net reduction of more than 1,600 km (1,000 mi) of road on the six GYA National Forests (inside and outside the PCA). Inside the PCA on National Forests, there was an average reduction (elimination) of 59.9 km (37.2 mi) of road per year from 1986 to 2002 (USDA Forest Service 2006a, p. 200). Similarly, outside the PCA, there was an average reduction of 40.7 km (25.3 mi) of road per year for this time period (USDA Forest Service 2006a, p. 200). There are no active oil and gas wells in Service-defined suitable grizzly habitat. There has never been any high-density oil and gas development in suitable grizzly habitat in the GYA. Inside the PCA, the potential for increased resource extraction in the future is severely limited due to the constraints on road construction and site development established by the Strategy.

We do not anticipate a dramatic increase in resource extraction outside of the PCA either due to the quantity of National Forest land designated as Wilderness Area (6,799 sq km (2,625 sq mi)), Wilderness Study Area (708 sq km (273 sq mi)), or Inventoried Roadless Area (6,179 sq km (2,386 sq mi)). Approximately 79 percent of all suitable habitat on National Forest lands outside the PCA falls into one of these categories.

Issue 9—One reviewer stated that there are no clear management responses described if habitat threshold values are not achieved. Another reviewer recommended that threshold values for habitat effectiveness be established, as these would be helpful for managers, even if they do not trigger exact management responses like the demographic criteria do.

Response—Because of the natural annual variability in the distribution and abundance of grizzly bear foods, there were no threshold values

established for these habitat parameters. Instead, the 1998 baseline attempted to establish realistic habitat standards that ensure adequate habitat security and minimum livestock conflicts within the PCA. The Study Team will continue to communicate with managers and the media about whitebark pine production as they obtain data each year. The goal of this effort is to inform the public of ways to avoid grizzly bear conflicts in poor food years.

Issue 10—One reviewer noted that the time lag in the feedback loop between habitat changes and population size (Doak 1995, p. 1378) poses a problem for monitoring population size alone. This reviewer suggested that a major research focus for the future should be to strive to improve habitat monitoring protocols such that habitat is monitored directly, not just via grizzly bear vital rates.

Response—The Strategy commits the agencies to intensive monitoring of all grizzly bear vital rates and the relationship of these vital rates to changes in major foods and levels and types of human activities in their habitat. This monitoring does not solely rely on vital rate monitoring to indirectly infer changes in habitat. Annual habitat monitoring will produce results on any changes in habitat values and key food production and possible disease in key foods. Thus, the system in place will not rely on indirect measures of habitat values but will produce direct measures of habitat values annually. Since our partners will be monitoring a suite of vital rates including survival of radio-collared bears, mortality of all conflict bears, and fecundity, we feel confident that we will be able to detect the consequences of significantly reduced habitat productivity.

Issue 11—One reviewer wanted to see more emphasis placed on not only tracking and categorizing private land development, but predicting it as well, to allow for proactive management.

Response—Data on private land development are gathered by, and are available from, the counties. These data are used by nongovernmental organizations and university researchers to project future growth and prioritize private lands that are most important to landscape connectivity and species diversity. For more information on recent land sale statistics, please see our response to Issue 6 under subheading H of the Summary of Public Comments section above.

The Service contends that grizzly bears can coexist with projected human population growth and land use in the foreseeable future, if an adequate management framework (i.e., the Strategy) is in place to manage grizzly bear mortality and habitat quality (Linnell *et al.* 2001, p. 348).

Issue 12—One reviewer recommended that the Service abandon the current Cumulative Effects Model in favor of a model that employs Resource Selection Functions. He contends that Resource Selection Functions models avoid many of the limitations associated with the Cumulative Effects Model including ''* * * lack of empiricism, pre-defined model structure, and arbitrary threshold criteria.'' Another reviewer also endorsed the use of Resource Selection Functions models and noted that they are becoming sophisticated enough to incorporate mortality risk, which would be invaluable to grizzly bear management.

Response—The Study Team is currently exploring alternative habitat models to the Cumulative Effects Model. Resource Selection Functions models are not always the best way to describe habitat relationships because estimated resource selection functions are not always proportional to the true probability of use (Keating and Cherry 2004, p. 788). We agree that linking habitat conditions to demographic data would be an invaluable management tool. The Study Team is currently developing habitat-based risk analysis models that will provide insight into these relationships. These models consider foods, habitat productivity, and human impacts to the landscape. As part of the adaptive management approach in the Strategy, the Study Team intends to link these hazard models with similar models of reproduction to develop models predicting population change on the landscape. Combined, these models will yield a projection of population viability. These efforts will continuously be updated and improved as new methods and information become available.

Issue 13—Several reviewers recommended that the Cumulative Effects Model be validated with empirical data and suggested that predicted use may not correlate well with actual grizzly bear use. They believed such validation would be helpful since the Service relies on the Cumulative Effects Model as a monitoring tool for habitat effectiveness and habitat mitigation. One reviewer suggested an approach that could link habitat (foods) and mortality so that the Cumulative Effects Model is adequate.

Response—Although we currently view the Cumulative Effects Model as the best scientific and commercial data available, we agree that it would be valuable to confirm the Cumulative Effects Model with empirical data. This criticism of the Cumulative Effects Model is one reason that the Strategy does not include threshold values for habitat effectiveness as calculated by the Cumulative Effects Model as a trigger for management action or a Biology and Monitoring Review. What the Cumulative Effects Model does provide is a relative measure of whether habitat quality has increased or decreased in areas across the landscape. However, it does not provide a reliable estimate of exactly how those changes in habitat quality will affect the Yellowstone grizzly bear population. The Study Team is currently exploring alternative habitat models to the Cumulative Effects Model. As the science further evolves, the Study Team will continue to use the best scientific and commercial information available.

G. Did we include all the necessary and pertinent literature to support our assumptions, arguments, and conclusions?

Issue 1—Several peer reviewers suggested additional literature to consider and possibly include in the final rule.

Response—The literature used and recommended by the peer reviewers has been considered and incorporated, as appropriate, in this final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, and delisting species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available demonstrate that the species is no longer endangered or threatened because of (1) extinction; (2) recovery; or (3) error in the original data used for classification of the species.

A recovered population is one that no longer meets the Act's definition of threatened or endangered. The analysis for a delisting due to recovery must be based on the five factors outlined in section 4(a)(1) of the Act. This analysis must include an evaluation of threats that existed at the time of listing and those that currently exist or that could potentially affect the species in the foreseeable future once the protections of the Act are removed.

The Act defines ''species'' to also include any subspecies or, for vertebrates, any DPS. Because the Yellowstone grizzly bear population is discrete and significant, as defined

above, it warrants recognition as a DPS under the Act and our policy (61 FR 4722, February 7, 1996). Therefore, our analysis only covers the Yellowstone DPS.

In terms of the ''foreseeable future,'' for the purposes of this final rule, we view ''foreseeable'' as ''such as reasonably can or should be anticipated: Such that a person of ordinary prudence would expect it to occur or exist under the circumstances'' (Merriam-Webster's Dictionary of Law 1996; *Western Watershed Project* v. *Foss* (D. Idaho 2005)). We use this definition, as opposed to an a priori time period (e.g., 100 years), to avoid placing an arbitrary limit on our time horizon. The foreseeable future is likely to differ for each factor potentially impacting the DPS. When evaluating population models or other modeling efforts (e.g., climate change models), with respect to foreseeable future, we take into consideration model variance over time and model outputs along with the decay in confidence as we forecast further into the future. This approach is more robust than simply looking at a single time-horizon because it uses all available data and takes into consideration the predictive value of that data. However, the Strategy which is intended to guide all management post-delisting, is anticipated to continue in perpetuity. To provide assurance that the DPS remains recovered beyond the foreseeable future, the Strategy provides that if future threats arise or known threats increase in magnitude, the Study Team and the Coordinating Committee are to adapt management to address any new or increased threats.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The following describes how we interpret the terms ''range'' and ''significant'' as used in the phrase ''significant portion of its range,'' and explains the basis for our use of those terms in this rule.

''Range''—The word ''range'' in the phrase ''significant portion of its range'' refers to the range in which a species currently exists, not to the historical range of the species where it once existed. The context in which the phrase is used is crucial. Under the Act's definitions, a species is ''endangered'' only if it ''is in danger of extinction'' in the relevant portion of its range. The phrase ''is in danger'' denotes a present-tense condition of being at risk of a future, undesired event. To say that a species ''is in danger'' in an area that is currently unoccupied, such as unoccupied historical range, would be inconsistent with common usage. Thus, ''range'' must mean ''currently-occupied range,'' not ''historical range.'' This interpretation of ''range'' is further supported by the fact that section 4(a)(1)(A) of the Act requires us to consider the ''present'' or ''threatened'' (i.e., future), rather than the past, ''destruction, modification, or curtailment'' of a species' habitat or range in determining whether a species is endangered or threatened.

However, the Ninth Circuit Court of Appeals appeared to conclude, without any analysis or explanation that the ''range'' referred to in the ''significant portion of its range'' phrase includes the historical range of the species. The court stated that a species ''can be *extinct* 'throughout * * * a significant portion of its range' if there are major geographical areas in which it is no longer viable but once was,'' and then faults the Secretary for not ''at least explain[ing] her conclusion that the area in which the species can no longer live is not a significant portion of its range.'' *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136, 1145 (emphasis added). This would suggest that the range we must analyze in assessing endangerment includes unoccupied historical range—i.e., the places where the species was once viable but no longer exists.

The statute does not support this interpretation. This interpretation is based on what appears to be an inadvertent misquote of the relevant statutory language. In addressing this issue, the Ninth Circuit states that the Secretary must determine whether a species is ''extinct throughout * * * a significant portion of its range.'' *Id.* If that were true, we would have to study the historical range. But that is not what the statute says, and the Ninth Circuit quotes the statute correctly elsewhere in its opinion. Under the Act, we are not to determine if a species is ''extinct throughout * * * a significant portion of its range,'' but are to determine if it ''is in danger of extinction throughout * * * a significant portion of its range.'' A species cannot presently be ''in danger of extinction'' in that portion of its range where it ''was once viable but no longer is''—if by the latter phrase the court meant lost historical habitat. In that portion of its range, the species has by definition ceased to exist. In such situations, it is not ''in danger of extinction''; it is extinct.

Although we must focus on the range in which the species currently exists, data about the species' historical range and how the species came to be extinct in that location may be relevant in understanding or predicting whether a species is ''in danger of extinction'' in its current range and therefore relevant to our 5 factor analysis. But the fact that it has ceased to exist in what may have been portions of its historical range does not necessarily mean that it is ''in danger of extinction'' in a significant portion of the range where it currently exists.

''Significant''—The Act does not clearly indicate what portion(s) of a species' range should be considered ''significant.'' Most dictionaries list several definitions of ''significant.'' For example, one standard dictionary defines ''significant'' as ''important,'' ''meaningful,'' ''a noticeably or measurably large amount,'' or ''suggestive'' (Merriam-Webster's Collegiate Dictionary 1088 (10th ed. 2000)). If it means a ''noticeably or measurably large amount,'' then we would have to focus on the size of the range in question, either in relation to the rest of the range or perhaps even in absolute terms. If it means ''important,'' then we would have to consider factors in addition to size in determining a portion of a species' range is ''significant.'' For example, would a key breeding ground of species be ''significant,'' even if it was only a small part of the species' entire range?

One district court interpreted the term to mean ''a noticeably or measurably large amount'' without analysis or any reference to other alternate meanings, including ''important'' or ''meaningful.'' *Defenders of Wildlife* v. *Norton,* 239 F. Supp. 2d 9, 19 (D.D.C. 2002). We consider the court's interpretation to be unpersuasive because the court did not explain why we could not employ another, equally plausible definition of ''significant.'' It is impossible to determine from the word itself, even when read in the context of the entire statute, which meaning of ''significant'' Congress intended. Moreover, even if it were clear which meaning was intended, ''significant'' would still require interpretation. For example, if it were meant to refer to size, what size would be ''significant'': 30 percent, 60 percent, 90 percent? Should the percentage be the same in every case or for each species? Moreover, what factors, if any, would be appropriate to consider in making a size determination? Is size all by itself ''significant,'' or does size only become ''significant'' when considered in combination with other factors? On the other hand, if ''significant'' were meant to refer to importance, what factors would need to be considered in

deciding that a particular portion of a species' range is ''important'' enough to trigger the protections of the Act?

Where there is ambiguity in a statute, as with the meaning of ''significant,'' the agency charged with administering the statute, in this case the Service, has broad discretion to resolve the ambiguity and give meaning to the term. As the Supreme Court has stated:

> In *Chevron,* this Court held that ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps, the Court explained, involves difficult policy choices that agencies are better equipped to make than courts. If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation.

Nat'l Cable & Telecomms. Ass'n v. *Brand X Internet Servs.,* 545 U.S. 967, 980 (2005) (internal citations omitted).

We have broad discretion in defining what portion of a species' range is ''significant.'' No ''bright line'' or ''predetermined'' percentage of historical range loss is considered ''significant'' in all cases, and we may consider factors other than simply the size of the range portion in defining what is ''significant.'' In light of the general ecosystems conservation purposes and findings in section 2 of the Act, our goal is to define ''significant'' in such a way as to insure the conservation of the species protected by the Act. In determining whether a range portion is significant, we consider the ecosystems on which the species that use that range depend as well as the values listed in the Act that would be impaired or lost if the species were to become extinct in that portion of the range or in the range as a whole.

However, our discretion in defining ''significant'' is not unlimited. The Ninth Circuit Court of Appeals, while acknowledging that we have ''a wide degree of discretion in delineating'' what portion of a range is ''significant,'' appeared to set outer limits of that discretion. *See Defenders of Wildlife* v. *Norton,* 258 F.3d 1136. On the one hand, it rejected what it called a quantitative approach to defining ''significant,'' where a ''bright line'' or ''predetermined'' percentage of historical range loss is considered ''significant'' in all cases. 258 F.3d. at 1143. As the court explained:

> First, it simply does not make sense to assume that the loss of a predetermined percentage of habitat or range would necessarily qualify a species for listing. A species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat. Similarly, a species with an exceptionally small historical range may quickly become endangered after the loss of even a very small percentage of habitat.

The Ninth Circuit concluded that what is ''significant'' must ''necessarily be determined on a case by case basis,'' and must take into account not just the size of the range but also the biological importance of the range to the species. 258 F.3d. at 1143. At the other end of the spectrum, the Ninth Circuit rejected what it called ''the faulty definition offered by us,'' a definition that holds that a portion of a species' range is ''significant'' only if the threats faced by the species in that area are so severe as to threaten the viability of the species as a whole. 258 F.3d. at 1143, 1146. It thus appears that within the two outer boundaries set by the Ninth Circuit, we have wide discretion to give the definitive interpretation of the word ''significant'' in the phrase ''significant portion of its range.''

Based on these principles, we considered the following factors in determining whether a portion of the grizzly's range is ''significant''—quality, quantity, and distribution of habitat relative to the biological requirements of the species; the historical value of the habitat to the species; the frequency of use of the habitat; the uniqueness or importance of the habitat for other reasons, such as breeding, feeding, migration, wintering, or suitability for population expansion; genetic diversity; and other biological factors. We focused on portions of the grizzly's range important to its conservation, such as identified ''recovery units''; unique habitat or other ecological features that provide adaptive opportunities that are of conservation importance to the species; and ''core'' populations that generate additional individuals of a species that can, over time, replenish depleted populations or stocks at the periphery of the species' range. We did not apply the term ''significant'' to portions of the species' range that constitute less-productive peripheral habitat, artificially-created habitat, or areas where the species has established itself in urban or suburban settings. Such portions of the species' range are not ''significant,'' in our view, to the conservation of the species as required by the Act.

The following analysis utilizes these definitions and examines all important factors currently affecting the Yellowstone grizzly bear DPS or likely to affect it within the foreseeable future. Therefore, this analysis was conducted over the entire current and foreseeable range of the grizzly bear including all ''suitable habitat'' (defined and discussed under Factor A below) within the DPS boundaries.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction and modification were major contributing factors leading to the listing of the grizzly bear as a threatened species under the Act in 1975 (40 FR 31734–31736, July 28, 1975). Both the dramatic decreases in historical range and land management practices in formerly secure grizzly bear habitat led to the 1975 listing (40 FR 31734–31736, July 28, 1975). To address this source of population decline, the Study Team was created in 1973 to collect, manage, analyze, and distribute science-based information regarding habitat and demographic parameters upon which to base management and recovery. Then, in 1983, the Interagency Grizzly Bear Committee was created to coordinate management efforts across multiple Federal lands and different States within the various Recovery Zones ultimately working to achieve recovery of the grizzly bear in the lower 48 States. Its objective was to change land management practices on Federal lands that supported grizzly bear populations at the time of listing to provide security and maintain or improve habitat conditions for the grizzly bear. Since 1986, National Forest and National Park plans have incorporated the Guidelines (USDA Forest Service 1986, pp. 1–2) to manage grizzly bear habitat in the Yellowstone Recovery Zone.

Management improvements made as a result of the Guidelines include, but are not limited to—(1) Federal and State agency coordination to produce nuisance bear guidelines that allow a quick response to resolve and minimize grizzly bear/human confrontations; (2) reduced motorized access route densities through restrictions, decommissioning, and closures; (3) highway design considerations to facilitate population connectivity; (4) closure of some important habitat areas to all human access in National Parks during certain seasons that are particularly important to grizzlies; (5) closure of many areas in the GYA to oil and gas leasing, or implementing restrictions such as no surface occupancy; (6) elimination of two sheep allotments on the Caribou-Targhee National Forest in 1998, resulting in a 46 percent decrease in total sheep

animal months inside the Yellowstone Recovery Zone; and (7) expanded I & E programs in the Yellowstone Recovery Zone to help reduce the number of grizzly mortalities caused by big-game hunters. Overall, adherence to the Guidelines has changed land management practices on Federal lands to provide security and to maintain or improve habitat conditions for the grizzly bear. Implementation of these Guidelines has led to the successful rebound of the Yellowstone grizzly bear population, allowing it to significantly increase in size and distribution since its listing in 1975.

In 2002, an interagency group representing pertinent State and Federal parties released the draft Final Conservation Strategy for the Grizzly Bear in the GYA to guide management and monitoring of the habitat and population of Yellowstone grizzly bears after delisting. The Strategy identifies and provides a framework for managing two areas, the PCA and adjacent areas of suitable habitat where occupancy by grizzly bears is anticipated in the foreseeable future. What follows is an assessment of present or threatened destruction, modification, or curtailment of the grizzly bear's habitat and range. More specifically, this analysis evaluates all areas capable of supporting grizzly bears including the PCA and all suitable habitat within the DPS. These terms and areas are defined below.

Suitable Habitat—Because we used easily recognized boundaries to delineate the Yellowstone DPS, the DPS includes both suitable and unsuitable habitat (see Figure 1 above). For the purposes of this final rule, suitable habitat is considered the area within the DPS boundaries capable of supporting a viable grizzly bear population now or in the foreseeable future. We have defined suitable habitat for grizzly bears as areas having three characteristics—(1) being of adequate habitat quality and quantity to support grizzly bear reproduction and survival; (2) contiguous with the current distribution of Yellowstone grizzly bears such that natural re-colonization is possible; and (3) having low mortality risk as indicated through reasonable and manageable levels of grizzly bear mortality. For more information see our response to Issue 2 under subheading G in the Summary of Public Comments section above.

Our definition and delineation of suitable habitat is built on the widely accepted conclusions of extensive research (Craighead 1980, pp. 8–11; Knight 1980, pp. 1–3; Peek *et al.* 1987, pp. 160–161; Merrill *et al.* 1999, pp. 233–235; Pease and Mattson 1999, p. 969) that grizzly bear reproduction and survival is a function of both the biological needs of grizzly bears and remoteness from human activities, which minimizes mortality risk for grizzly bears. Mountainous areas provide hiding cover, the topographic variation necessary to ensure a wide variety of seasonal foods, and the steep slopes used for denning (Judd *et al.* 1986, pp. 114–115; Aune and Kasworm 1989, pp. 29–58; Linnell *et al.* 2000, pp. 403–405). Higher elevation, mountainous regions in the GYA (Omernik 1987, pp. 118–125; Omernik 1995, pp. 49–62; Woods *et al.* 1999; McGrath *et al.* 2002; Chapman *et al.* 2004) contain high-energy foods such as whitebark pine seeds (Mattson and Jonkel 1990, p. 223; Mattson *et al.* 1991a, p. 1623) and army cutworm moths (Mattson *et al.* 1991b, 2434; French *et al.* 1994, p. 391).

For our analysis of suitable habitat, we considered the Middle Rockies ecoregion, within which the Greater Yellowstone Area is contained, (Omernik 1987, pp. 120–121; Woods *et al.* 1999; McGrath *et al.* 2002; Chapman *et al.* 2004) to meet grizzly bear biological needs providing food, seasonal foraging opportunities, cover, and denning areas (Mattson and Merrill 2002, p. 1125). The Middle Rockies ecoregion has Douglas-fir, subalpine fir, and Engelmann spruce forests and alpine areas. Forests can be open. Foothills are partly wooded or shrub- and grass-covered. Intermontane valleys are grass- and/or shrub-covered and contain a mosaic of terrestrial and aquatic fauna that is distinct from the nearby mountains. Many mountain-fed, perennial streams occur and differentiate the intermontane valleys from the Northwestern Great Plains. Recreation, logging, mining, and summer livestock grazing are common land uses in this ecoregion.

Although grizzly bears historically occurred throughout the area of the Yellowstone DPS (Stebler 1972, pp. 297–298), many of these habitats are not, today, biologically suitable for grizzly bears. While there are records of grizzly bears in eastern Wyoming near present-day Sheridan, Casper, and Wheatland, even in the early 19th century, indirect evidence suggests that grizzly bears were less common in these eastern prairie habitats than in mountainous areas to the west (Rollins 1935, p. 191; Wade 1947, p. 444). Grizzly bear presence in these drier, grassland habitats was associated with rivers and streams where grizzlies used bison carcasses as a major food source (Burroughs 1961, pp. 57–60; Herrero 1972, pp. 224–227; Stebler 1972, pp. 297–298; Mattson and Merrill 2002, pp. 1128–1129). Because wild bison herds no longer exist in these areas, these areas are no longer capable of contributing, in a meaningful way, to the overall status of the Yellowstone DPS. Thus, we did not include drier sagebrush, prairie, or agricultural lands within our definition of suitable habitat because these land types no longer contain adequate food resources (i.e., bison) to support grizzly bears. Figure 1 above illustrates suitable habitat within the Yellowstone DPS.

Unavoidable and uncontrollable mortality also can impact which habitat might be considered suitable. Some mortality, including human-caused mortality, is unavoidable in a dynamic system where hundreds of bears inhabit large areas of diverse habitat with several million human visitors and residents. The negative impacts of humans on grizzly bear survival and habitat use are well documented (Harding and Nagy 1980, p. 278; McLellan and Shackleton 1988, pp. 458–459; Aune and Kasworm 1989, pp. 83–103; McLellan 1989, pp. 1862–1864; McLellan and Shackleton 1989, pp. 377–378; Mattson 1990, pp. 41–44; Mattson and Knight 1991, pp. 9–11; Mattson *et al.* 1992, pp. 436–438; Mace *et al.* 1996, p. 1403; McLellan *et al.* 1999, pp. 914–916; White *et al.* 1999, p. 150; Woodroffe 2000, pp. 166–168; Boyce *et al.* 2001, p. 34; Johnson *et al.* 2004, p. 976). These effects range from temporary displacement to actual mortality. Mattson and Merrill (2002, pp. 1129–1134) found that grizzly bear persistence in the contiguous United States between 1920 and 2000 was negatively associated with human and livestock densities. As human population densities increase, the frequency of encounters between humans and grizzly bears also increases, resulting in more human-caused grizzly bear mortalities due to a perceived or real threat to human life or property (Mattson *et al.* 1996, pp. 1014–1015). Similarly, as livestock densities increase in habitat occupied by grizzly bears, depredations follow. Although grizzly bears frequently coexist with cattle without depredating them, when grizzly bears encounter domestic sheep, they usually are attracted to such flocks and depredate the sheep (Jonkel 1980, p. 12; Knight and Judd 1983, pp. 188–189; Orme and Williams 1986, pp. 199–202; Anderson *et al.* 2002, pp. 252–253). If repeated depredations occur, managers either relocate the bear or remove it from the population, resulting in such domestic sheep areas becoming

population sinks (Knight *et al.* 1988, pp. 122–123).

Because urban sites and sheep allotments possess high mortality risks for grizzly bears, we did not include these areas as suitable habitat (Knight *et al.* 1988, pp. 122–123). Based on 2000 Census data, we defined urban areas as census blocks with human population densities of more than 50 people per sq km (129 people per sq mi). Cities within the Middle Rockies ecoregion such as West Yellowstone, Gardiner, Big Sky, and Cooke City, Montana, and Jackson, Wyoming, were not included as suitable habitat. There are large, contiguous blocks of sheep allotments in peripheral areas of the ecosystem in the Wyoming Mountain Range, the Salt River Mountain Range, and portions of the Wind River Mountain Range on the Bridger-Teton and the Targhee National Forests (see Figure 1 above). This spatial distribution of sheep allotments on the periphery of suitable habitat results in areas of high mortality risk to bears within these allotments and a few small, isolated patches or strips of suitable habitat adjacent to or within sheep allotments. These strips and patches of land possess higher mortality risks for grizzly bears because of their enclosure by and proximity to areas of high mortality risk. This phenomenon in which the quantity and quality of suitable habitat is diminished because of interactions with surrounding less suitable habitat is known as an ''edge effect'' (Lande 1988, pp. 3–4; Yahner 1988, pp. 335–337; Mills 1995, p. 396). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (i.e., those that are longer and narrower) and in wide-ranging species such as grizzly bears because they are more likely to encounter surrounding, unsuitable habitat (Woodroffe and Ginsberg 1998, p. 2126). Due to the negative edge effects of this distribution of sheep allotments on the periphery of grizzly range, our analysis did not classify linear strips and isolated patches of habitat as suitable habitat.

Finally, dispersal capabilities of grizzly bears were factored into our determination of which potential habitat areas might be considered suitable. Although the Bighorn Mountains west of I–90 near Sheridan, Wyoming, are grouped within the Middle Rockies ecoregion, they are not connected to the current distribution of grizzly bears via suitable habitat or linkage zones, nor are there opportunities for such linkage. The Bighorn Mountains are comprised of 6,341 sq km (2,448 sq mi) of habitat that is classified as part of the Middle Rockies ecoregion, but are separated from the current grizzly bear distribution by approximately 100 km (60 mi) of a mosaic of private and BLM lands primarily used for agriculture, livestock grazing, and oil and gas production (Chapman *et al.* 2004). Although there is a possibility that individual bears may emigrate from the GYA to the Bighorns occasionally, this dispersal distance exceeds the average dispersal distance for both males (30 to 42 km (19 to 26 mi)) and females (10 to 14 km (6 to 9 mi)) (McLellan and Hovey 2001, p. 842, Proctor *et al.* 2004, p. 1108). Without constant emigrants from suitable habitat, the Bighorns will not support a self-sustaining grizzly bear population. Therefore, due to the fact that this mountain range is disjunct from other suitable habitat and current grizzly bear distribution, our analysis did not classify the Bighorns as suitable habitat within the Yellowstone DPS boundaries.

Some areas that are not considered suitable habitat by our definition are occasionally used by grizzly bears (4,635 sq km (1,787 sq mi)) (see Figure 1 above) (Schwartz *et al.* 2002, p. 209; Schwartz *et al.* 2006b, pp. 64–66). The records of grizzly bears in these unsuitable habitat areas are generally due to recorded grizzly bear/human conflicts or to transient animals. These areas are defined as unsuitable due to the high risk of mortality resulting from these grizzly bear/human conflicts. These unsuitable habitat areas do not permit grizzly bear reproduction or survival because bears that repeatedly come into conflict with humans or livestock are usually either relocated or removed from these areas.

According to the habitat suitability criteria described above, the Yellowstone DPS contains approximately 46,035 sq km (17,774 sq mi) of suitable grizzly bear habitat within the DPS boundaries; or roughly 24 percent of the total area within the DPS boundaries (see Figure 1 above). This amount of suitable habitat is sufficient to meet all habitat needs of a recovered grizzly bear population and provide ecological resiliency to the population through the availability of widely distributed, high-quality habitat that will allow the population to respond to environmental changes. Grizzly bears currently occupy about 68 percent of that suitable habitat (31,481 sq km (12,155 sq mi)) (Schwartz *et al.* 2002, pp. 207–209; Schwartz *et al.* 2006b, pp. 64–66). It is important to note that the current grizzly bear distribution shown in Figure 1 does not mean that equal densities of grizzly bears are found throughout the region. Instead, most grizzly bears (approximately 84 to 90 percent of females with cubs-of-the-year) are found within the PCA (Schwartz *et al.* 2006b, pp. 64–66). Grizzly bear use of suitable habitat may vary seasonally and annually with different areas being more important than others in some seasons or years (Aune and Kasworm 1989, pp. 48–62). An additional 14,554 sq km (5,619 sq mi) of suitable habitat is currently unoccupied by grizzly bears (see Figure 1 above) (Schwartz *et al.* 2002, pp. 207–209; Schwartz *et al.* 2006b, pp. 64–66). We expect natural recolonization of much, if not all, of this area in the next few decades (Pyare *et al.* 2004, pp. 5–6).

Significant Portion of Range—We determined whether a portion of the species range is significant based on the biological needs of the species and the nature of the threats to the species. As stated above, the factors we used to determine significance include, but may not be limited to the following: Quality, quantity, and distribution of habitat relative to the biological requirements of the species; the historic value of the habitat to the species; the frequency of use of the habitat; the uniqueness or importance of the habitat for other reasons, such as breeding, feeding, migration, wintering, or suitability for population expansion; genetic diversity (the loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes or perturbations); and other biological factors (*e.g.* resilience to recover from periodic disturbances or environmental variability).

After careful examination of the Yellowstone grizzly bear DPS in the context of our definition of ''significant portion of its range,'' we have determined all suitable habitat in the DPS (as per our definition above) (approximately 46,035 sq km (17,774 sq mi)) (see Figure 1 above), to varying levels, is a significant portion of its range. Within suitable habitat, the PCA represents the most significant portion of the range. As such, this area is designated the ''primary'' conservation area and provides the highest levels of protective management. This area was originally selected as the focus of our recovery efforts because it was seen ''as an area large enough and of sufficient habitat quality to support a recovered grizzly bear population'' (U.S. Fish and Wildlife Service 1982, pp. 55–58; U.S. Fish and Wildlife Service 1993, pp. 41). This area includes approximately 51 percent of the suitable habitat within the DPS and approximately 84 to 90 percent of the population of female grizzly bears with cubs (Schwartz *et al.* 2006b, pp. 64–66). Because an estimated

86.5 percent of the GYA grizzly bears live within the PCA and these bears have experienced positive annual population increases of 4 percent inside Yellowstone National Park, and 12 percent in the area inside the PCA but outside of Yellowstone National Park (Schwartz *et al.* 2006e, p. 58), the PCA is particularly biologically significant to the Yellowstone DPS. It serves as a source area from which grizzly bears can expand into peripheral areas and currently unoccupied suitable habitat. Additionally, the PCA's geographic location in the northwest corner of the DPS area adds to its biological significance because it is the area nearest to other grizzly bear recovery ecosystems. If and when connectivity is established among grizzly bear populations in the lower 48 States, the PCA will play a role in providing dispersers to other ecosystems and providing secure, quality habitat for dispersers from other grizzly bear ecosystems. This portion of the range is necessary for maintaining a recovered population.

While the PCA provides for the primary biological needs of the Yellowstone grizzly bear DPS, suitable habitat outside the PCA also plays a role in ensuring the future viability of the species, in that it allows for continued population expansion into adjacent areas of public land in the GYA, and therefore, provides additional ecological resiliency to respond to environmental change. Given this differential level of importance, differential levels of management and protection (one standard inside the PCA and another standard for suitable habitat outside the PCA) are justified.

As noted above, we do not believe that areas of unsuitable habitat: Contribute, in a meaningful way, to the biological requirements of the species; are of especially important historical value; represent unique habitats or other ecological features that provide adaptive opportunities that are of conservation importance to the species; or, are necessary to maintain genetic diversity. Unsuitable habitat, by and large, constitutes less-productive peripheral habitat. Therefore, we believe unsuitable habitat, as defined in this section above, is not ''significant'' to the conservation of the species and does not constitute a significant portion of range. A lack of occupancy in unsuitable habitat will not impact whether this population is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Suitable Habitat Management within the Primary Conservation Area—As per the Strategy and the habitat-based recovery criteria discussed above, the PCA will be a core secure area for grizzlies where human impacts on habitat conditions will be maintained at or below levels that existed in 1998 (U.S. Fish and Wildlife Service 2007, p. 38). The 1998 baseline for habitat standards was chosen because the levels of secure habitat and developed sites remained relatively constant in the 10 years preceding 1998 (USDA Forest Service 2004, pp. 140–141), and the selection of 1998 assured that the habitat conditions that allowed the population to increase at a rate of 4 to 7 percent per year (Harris *et al.* 2006, p. 48) would be maintained. For each of the 40 bear management subunits, the 1998 baseline was determined through a GIS analysis of the amount of secure habitat, open and closed road densities, the number and capacity of livestock allotments, the number of developed sites on public lands, and habitat effectiveness.

Secure habitat refers to those areas with no motorized access that are at least 4 ha (10 ac) in size and more than 500 m (1650 ft) from a motorized access route or reoccurring helicopter flight line (USDA Forest Service 2004, pp. 160–161). Grizzly bear habitat security is primarily achieved by managing motorized access which—(1) minimizes human interaction and reduces potential grizzly bear mortality risk; (2) minimizes displacement from important habitat; (3) minimizes habituation to humans; and (4) provides habitat where energetic requirements can be met with limited disturbance from humans (Mattson *et al.* 1987, pp. 269–271; McLellan and Shackleton 1988, pp. 458–459; McLellan 1989, pp. 1862–1864; Mace *et al.* 1996, pp. 1402–1403; Mattson *et al.* 1996, pp. 1014–1015). Secure habitat is important to the survival and reproductive success of grizzly bears, especially adult female grizzly bears (Mattson *et al.* 1987, p. 270; Interagency Grizzly Bear Committee 1994, p. 2). In the 1998 baseline, secure habitat comprised 45.4 to 100 percent of the total area within a given subunit with an average of 85.6 percent throughout the entire PCA (U.S. Fish and Wildlife Service 2007, pp. 133–144, Appendix F). These levels of secure habitat have been successfully maintained and will continue to be maintained and improved, where possible, as directed by the Strategy (U.S. Fish and Wildlife Service 2007, p. 135, Table 2 in Appendix F). Because of the positive effect that secure habitat has on grizzly bear survival and reproduction, it is especially important to maintain these levels of secure habitat inside the PCA so that it will continue to function as a source area for grizzly bears.

Open road densities of more than 1.6 km/2.6 sq km (1 mi/sq mi) were calculated for two seasons to account for seasonal road closures. The percentage of land within each subunit containing road density values higher than 1.6 km/2.6 sq km (1 mi/sq mi) in 1998 ranged from 0 to 46.1 percent, although the average for all subunits was only 10.7 percent. Lands containing total road density values of more than 3.2 km/2.6 sq km (2 mi/sq mi) in 1998 comprised 0 to 28.1 percent of the total area within each subunit, with an average for all subunits of 5.3 percent (U.S. Fish and Wildlife Service 2007, p. 135). These levels of motorized access have been effectively maintained or improved from 1998 levels. The Strategy assures that current levels of secure habitat will be maintained at 1998 levels (U.S. Fish and Wildlife Service 2007, p. 38).

Several subunits within the boundaries of the Gallatin National Forest (Henry's Lake No. 2, Gallatin No. 3, and Madison No. 2) within the PCA have been identified as needing improvement in access parameters. However, the high road density values and subsequently low levels of secure habitat in these subunits is primarily due to motorized access on private land (U.S. Fish and Wildlife Service 2007, p. 145–152, Appendix G). The Gallatin National Forest is working on several land exchange efforts with private parties in these subunits. These land exchanges would allow management of the roads on these private parcels and increase the secure habitat in these subunits. All the above-mentioned subunits on the Gallatin National Forest have the potential for improvement in the long term. The timing and amount of improvement will be determined through the Gallatin National Forest travel management planning process (Gallatin National Forest 2006, pp. 82–85). Improved levels of secure habitat as per the Gallatin National Forest travel management plan will assure that the habitat security will be maintained.

The Gallatin Range Consolidation and Protection Act of 1993 (Pub. L 103–91) and the Gallatin Range Consolidation Act of 1998 (Pub. L 105–267) will result in trading timber for land in the Gallatin No. 3 and Hilgard No. 1 subunits. The private land involved will become public land under the jurisdiction of the Gallatin National Forest. In order to complete the exchange, access values in these two subunits will temporarily decline below 1998 values. However, upon completion of this sale and land

exchange, secure habitat will increase and motorized access route density will decrease in these subunits from the 1998 baseline (U.S. Fish and Wildlife Service 2007, pp. 133–144, Appendix F).

The Strategy also identified several subunits within the boundaries of the Targhee National Forest within the PCA in need of improvement in terms of motorized access (Plateau No. 1, Plateau No. 2, and Henry's Lake No. 1). The Strategy states that full implementation of the access management changes in the revised 1997 Targhee Forest Plan would result in those subunits having acceptable levels of road densities and secure habitat, due to the decommissioning of roughly 697 km (433 mi) of roads within the PCA (U.S. Fish and Wildlife Service 2007, pp. 43–44). As of 2005, the Targhee National Forest completed this decommissioning work (USDA Forest Service 2006a, pp. 200–201). The 1998 baseline (U.S. Fish and Wildlife Service 2007, pp. 133–144, Appendix F) for these subunits was modified to reflect these road closures. Henry's Lake subunit No. 1 and No. 2 still have high levels of motorized access density and a low secure habitat level due to motorized access routes on private lands as well as county roads, State and Federal highways, and roads to special use sites (such as the Federal Aviation Administration radar site on Sawtell Peak) that cannot be closed (U.S. Fish and Wildlife Service 2007, pp. 133–144, Appendix F). These levels of secure habitat do not constitute a threat to the grizzly bear population in all or a significant portion of its range.

At least 3 million people visit and recreate in the National Parks and National Forests of the GYA annually (USDA Forest Service 2006a, pp. 176, 184). This volume of people in grizzly bear habitat presents a potential for grizzly bear/human conflicts, yet the average number of conflicts per year between 1992 and 2004 was only 135 (Gunther *et al.* 2006, p. 58). Based on past trends, visitation and recreation are expected to increase in the future. For instance, Yellowstone National Park has shown an approximate 15 percent annual increase in the number of people visiting each decade since the 1930s (USDA Forest Service 2006a, p. 183); however, the number of people recreating in the backcountry there has remained relatively constant from the 1970s through 1999 (Gunther 2000, p. 48). Many grizzly bear/human conflicts with people recreating occur on National Forest lands and are related to hunting (Servheen *et al.* 2004, p. 21) (also see our discussion under Factor C below). Black bear hunting is not allowed in either National Park and elk hunting is only allowed in Grand Teton National Park. Elk hunters in Grand Teton National Park are required to carry bear pepper spray in an accessible location. The number of elk hunter visits in the PCA on National Forests has declined 26 percent from 1991 to 2001 (USDA Forest Service 2006a, p. 186). Most conflicts between grizzly bears and people recreating in grizzly bear habitat can be avoided if proper I & E materials are received and used, especially pertaining to food and carcass storage, and therefore ensure the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range within the foreseeable future.

Recreation in the GYA can be divided into 6 basic categories based on season of use (winter or all other seasons), mode of access (motorized or non-motorized), and level of development (developed or dispersed) (USDA Forest Service 2006a, p. 187). Inside the PCA, the vast majority of lands available for recreation are accessible through non-motorized travel only (USDA Forest Service 2006a, p. 179). Motorized recreation during the summer, spring, and fall inside the PCA will be limited to existing roads as per the standards in the Strategy that restrict increases in roads or motorized trails. Similarly, recreating at developed sites such as lodges, downhill ski areas, and campgrounds will be limited by the developed sites' habitat standard described in the Strategy. The number and capacity of existing developed sites will not increase once delisting occurs. For a more complete discussion of projected increases in recreation in the GYA National Forests, see the Final Environmental Impact Statement for the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests (USDA Forest Service 2006a, pp. 176–189).

Habitat standards described in the Strategy regarding livestock require that the number of commercial livestock allotments and permitted sheep animal months within the PCA not increase above 1998 levels (U.S. Fish and Wildlife Service 2007, p. 43). Livestock allotments, particularly sheep allotments, decrease habitat security (*i.e.*, habitat effectiveness) as grizzly bears occupying lands with sheep are more likely to come into conflict with these sheep. This increase in encounters between bears and livestock or their human owners decreases survival rates of grizzly bears in areas of active sheep allotments, as repeat depredators are removed from the population. Although sheep and cattle also can compete directly to some degree with grizzly bears during late spring and early summer for desired foods such as grasses, sedges, and forbs (Jonkel 1980, p. 12), this is considered negligible to grizzly bear population dynamics. Due to the higher prevalence of grizzly bear conflicts associated with sheep grazing, existing sheep allotments will be phased out as the opportunity arises with willing permittees (U.S. Fish and Wildlife Service 2007, p. 43).

A total of 100 livestock allotments existed inside the PCA in 1998. Of these allotments, there were—69 active and 13 vacant cattle allotments; and 11 active and 7 vacant sheep allotments with a total of 23,090 animal months (USDA Forest Service 2006a, p. 382). Sheep animal months are calculated by multiplying the permitted number of animals by the permitted number of months. Any use of vacant allotments will only be permitted after an analysis is completed to evaluate impacts on grizzly bears. Since 1998, the Caribou-Targhee National Forest has closed five sheep allotments within the PCA while the Shoshone National Forest has closed two sheep allotments (USDA Forest Service 2005, p. 50). This has resulted in a reduction of 7,889 sheep animal months under the total calculated for 1998 within the PCA, and is a testament to the commitment land management agencies have to the ongoing success of the grizzly bear population in the GYA. As of 2006, there are a total of two active sheep allotments within the PCA, both on the Targhee National Forest. The permittee of the two allotments on the Gallatin National Forest that were active in 2005 when the Proposed rule was published, agreed to waive the grazing permit back to the Gallatin National Forest without preference and these two sheep allotments were closed in 2006. The Gallatin National Forest plans to close three other vacant allotments when they revise their current Forest Plan. This Forest Plan revision process is scheduled to be completed by 2010 (USDA Forest Service 2005, p. 11). The mandatory restriction on creating new livestock allotments and the voluntary phasing out of livestock allotments with recurring conflicts further ensure that the PCA will continue to function as source habitat.

The National Parks and National Forests within the PCA will manage developed sites at 1998 levels within each bear management subunit, with some exceptions for administrative and maintenance needs (U.S. Fish and Wildlife Service 2007, pp. 38–56). Developed sites refer to sites on public land developed or improved for human

use or resource development. Examples include campgrounds, trailheads, lodges, summer homes, restaurants, visitor centers, oil and gas exploratory wells, production wells, and work camps. The primary concerns related to developed sites are direct mortality from bear/human encounters, food conditioning, and habituation of bears to humans (Mattson *et al.* 1987, p. 271). Habituation occurs when grizzly bears encounter humans or developed sites frequently, and without negative consequences, so that the bears no longer avoid humans and areas of human activity (U.S. Fish and Wildlife Service 1993, p. 6). Habituation does not necessarily involve human-related food sources. Food conditioning occurs when grizzly bears receive human-related sources of food and thereafter seek out humans and human use areas as feeding sites (U.S. Fish and Wildlife Service 1993, p. 6). In areas of suitable habitat inside the PCA, the National Park Service and the USDA Forest Service enforce food storage rules aimed at decreasing grizzly bear access to human foods (U.S. Fish and Wildlife Service 2007, pp. 23–24). These regulations will continue to be enforced and are in effect, or proposed, for all currently occupied grizzly bear habitat within the Yellowstone DPS boundaries (U.S. Fish and Wildlife Service 2007, pp. 23–24).

Gunther (1994, pp. 558–559) noted that grizzly bear management in Yellowstone National Park has shifted from problems involving food-conditioned bears to problems involving habituated (but not food-conditioned) bears seeking natural foods within developed areas or along roadsides. New or expanded developed sites can impact bears through temporary or permanent habitat loss and displacement, increased length of time of human use, increased human disturbance to surrounding areas, and, potentially unsecured bear attractants.

Developed sites on public lands are currently inventoried in existing GIS databases and are input in the Yellowstone Grizzly Bear Cumulative Effects Model. As of 1998, there were 598 developed sites on public land within the PCA (USDA Forest Service 2005, pp. 56–57). All changes in developed sites since 1998 have been evaluated against the baseline and have been determined to be acceptable under the standard for developed sites identified in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 44–45). For a new developed site to be determined acceptable, it must be demonstrated that it will have no effect on grizzly bears (U.S. Fish and Wildlife Service 2007, pp. 42). For example, a cell phone tower would fit this criterion because there is no human occupancy, nor human attractants such as garbage or other potential food sources. However, campgrounds, trailheads, lodges, summer homes, restaurants, visitor centers, oil and gas exploratory wells, production wells, and work camps would not be considered acceptable. Inside the PCA, no changes in the 1998 baseline have occurred in terms of site developments. The maintenance of the number and capacity of developed sites at 1998 levels further protects this significant portion of the DPS' range and ensures the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range within the foreseeable future.

Management of oil, gas, and mining are tracked as part of the developed site monitoring effort (U.S. Fish and Wildlife Service 2007, p. 44). There were no active oil and gas leases inside the PCA as of 1998 (USDA Forest Service 2006a, p. 209). There are approximately 631 sq km (244 sq mi) of secure habitat potentially available for timber projects and 243 sq km (94 sq mi) of secure habitat that allows surface occupancy for oil and gas, projects within the PCA (USDA Forest Service 2006a, Figures 48, 96). This comprises less than 4 percent of all suitable habitat within the PCA. Additionally, 1,354 mining claims existed in 10 of the subunits inside the PCA (U.S. Fish and Wildlife Service 2007, p.134, Appendix F), but only 27 of these mining claims had operating plans. These operating plans are included in the 1998 developed site baseline. Under the conditions of the Strategy, any new project will be approved only if it conforms to secure habitat and developed site standards (U.S. Fish and Wildlife Service 2007, pp. 44–45). For instance, any project that reduces the amount of secure habitat permanently will have to provide replacement secure habitat of equivalent habitat quality (as measured by the Cumulative Effects Model or equivalent technology) and any change in developed sites will require mitigation equivalent to the type and extent of the impact, and such mitigation must be in place before project initiation or be provided concurrently with project development as an integral part of the project plan (U.S. Fish and Wildlife Service 2007, p. 40–41). For projects that temporarily change the amount of secure habitat, only one project is allowed in any subunit at any time (U.S. Fish and Wildlife Service 2007, pp. 40–41). Mitigation of any project will occur within the same subunit and will be proportional to the type and extent of the project (U.S. Fish and Wildlife Service 2007, p. 40–41).

Finally, we established a habitat effectiveness baseline by documenting habitat effectiveness values using the Cumulative Effects Model and 1998 habitat data (U.S. Fish and Wildlife Service 2007, pp. 52–53). Habitat effectiveness values reflect the relative amount of energy (derived from natural foods) that is available to grizzly bears given their response to human activities. Important foods are key habitat-based criteria. The inverse relationship between whitebark pine cone production and grizzly conflicts in the Yellowstone Ecosystem has been documented (Mattson *et al.* 1992, p. 436; Gunther *et al.* 1997, p. 38; Gunther *et al.* 2004, pp. 13–14). However, the relationship between other important foods such as spring ungulate carcasses, cutworm moths, and cutthroat trout is not as clear cut. Therefore, it is important to monitor foods and continue to relate major food abundance to demographics and human/bear conflicts. Monitoring habitat effectiveness using the Cumulative Effects Model is valuable in understanding and maintaining important habitats for grizzly bears. The Study Team will continue coordinating with the National Forests and National Parks within the PCA to update and evaluate habitat effectiveness against the 1998 baseline.

To establish the 1998 baseline for habitat effectiveness values, the USDA Forest Service calculated habitat effectiveness within each subunit for four important bear seasons—spring (March 1 to May 15); estrus (May 16 to July 15); early hyperphagia (July 16 to August 31); and late hyperphagia (September 1 to November 30) (U.S. Fish and Wildlife Service 2007, pp. 133–144, Table 6 in Appendix F). High habitat effectiveness values during estrus are associated with cutthroat trout spawning streams (U.S. Fish and Wildlife Service 2007, p. 140). Similarly, high habitat effectiveness values during early hyperphagia and late hyperphagia are associated with moth aggregation sites and whitebark pine, respectively (U.S. Fish and Wildlife Service 2007, p. 140). Habitat effectiveness values also are directly influenced by the amount of secure habitat in a subunit. This combination of the distribution and abundance of natural foods and the distribution and abundance of human activities produces relative values indicative of how effective a certain subunit is at supporting grizzly bear growth, reproduction, and survival (U.S. Fish

and Wildlife Service 2007, p. 140). As such, values varied widely among seasons and across seasons within subunits (U.S. Fish and Wildlife Service 2007, p 141, Table 6 in Appendix F). Because the National Park Service and the USDA Forest Service have not changed levels of road densities, secure habitat, developed sites, or livestock allotments except to improve upon the 1998 baseline, the 1998 habitat effectiveness values remain applicable. Regardless of habitat effectiveness values, the Yellowstone grizzly bear population has continued to grow and expand in distribution (Harris *et al.* 2006, p. 48; Schwartz *et al.* 2006b, pp. 64–66). Upon delisting, the USDA Forest Service will measure changes in seasonal habitat effectiveness values in each Bear Management Unit and subunit by regular application of the Cumulative Effects Model or best available system and compare outputs with the 1998 baseline values (U.S. Fish and Wildlife Service 2007, pp. 52–53). The Cumulative Effects Model provides a relative index of habitat change over time and how it has increased or decreased since 1998. The Cumulative Effects Model databases will be reviewed annually and updated as needed (U.S. Fish and Wildlife Service 2007, pp. 52–53).

The Strategy calls for maintaining or improving the existing habitat effectiveness values in secure habitat in each subunit but recognizes that they change annually and seasonally due to natural processes such a wildfire and natural variations (U.S. Fish and Wildlife Service 2007, pp. 52–53). The best way to maintain existing habitat effectiveness values is to manage motorized access and developed sites, as described in the Strategy. Private land development also will be monitored and linked to numbers of human-bear conflicts, causes of human-bear conflicts, and distribution of human-bear conflicts so as to direct management efforts to improve food supply and minimize bear/human conflicts in such areas.

Within the PCA, each National Forest and National Park will monitor adherence to the secure habitat, developed site, and livestock standards inside the PCA, as established by the Strategy (U.S. Fish and Wildlife Service 2007, p. 64). The Study Team will monitor habitat effectiveness and track any changes to the habitat from fire, insects, and disease, and other human activities not measured by the habitat standard monitoring efforts. The agencies will measure changes in seasonal habitat value and effectiveness in each bear management unit and subunit by regular application of the Cumulative Effects Model or the best available system, and compare outputs to the 1998 baseline. These databases incorporate information regarding vegetation, the abundance and distribution of the four major bear foods, location, duration, and intensity of use for motorized access routes, non-motorized access routes, developed sites, and front-country and back-country dispersed uses. The Study Team will review Cumulative Effects Model databases annually to refine and verify Cumulative Effects Model assumptions and update them as needed to reflect changes in intensity or duration of human use. The Coordinating Committee may review and revise habitat standards based on the best available science, after appropriate public processes have been conducted by the affected land management agencies.

To prevent habitat fragmentation and degradation, the Strategy requires that all road construction projects in suitable habitat on Federal lands throughout the entire GYA (both inside and outside of the PCA) evaluate the impacts of the project on grizzly habitat connectivity during the NEPA process (U.S. Fish and Wildlife Service 2007, pp. 38–39). By identifying areas used by grizzly bears, officials can mitigate potential impacts from road construction both during and after a project. Federal agencies will identify important crossing areas by collecting information about known bear crossings, bear sightings, ungulate road mortality data, bear home range analyses, and locations of game trails. Potential advantages of this requirement include reduction of grizzly bear mortality due to vehicle collisions, access to seasonal habitats, maintenance of traditional dispersal routes, and decreased fragmentation of individual home ranges. For example, work crews will place temporary work camps in areas with lower risk of displacing grizzly bears, and food and garbage will be kept in bear-proof containers. Highway planners will incorporate warning signs and crossing structures such as culverts or underpasses into projects when possible to facilitate safe highway crossings by wildlife.

''Suitable Habitat'' Management Outside the Primary Conservation Area—In suitable habitat outside of the PCA within the DPS, the USDA Forest Service, BLM, and State wildlife agencies will monitor habitat and population criteria to prevent potential threats to habitat, ensuring that the measures of the Act continue to be unnecessary (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 2–3; MTFWP 2002, p. 2; WGFD 2005, p. 1; USDA Forest Service 2006a, pp. 44–45; U.S. Fish and Wildlife Service 2007, p. 5). Factors impacting suitable habitat outside of the PCA in the future may include increased road densities, livestock allotments, developed sites, human presence, and habitat fragmentation. Both Federal and State agencies are committed to managing habitat so that the measures of the Act are not required to assure the Yellowstone grizzly bear DPS is not likely to become endangered in all or a significant portion of its range in the foreseeable future (U.S. Fish and Wildlife Service 2007, pp. 12–85; Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 2–3; MTFWP 2002, p. 2; WGFD 2005, p. 1) (see Factor D below). In suitable habitat outside of the PCA, restrictions on human activities are more flexible but still the USDA Forest Service, BLM, and State wildlife agencies will carefully manage these lands, monitor bear/human conflicts in these areas, and respond with management as necessary to reduce such conflicts to account for the complex needs of both grizzly bears and humans (U.S. Fish and Wildlife Service 2007, p. 58; Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 16–17; MTFWP 2002, pp. 55–56; WGFD 2005, pp. 25–26; USDA Forest Service 2006b, pp. A1–A27).

Currently, there are 22,783 sq km (8,797 sq mi) of suitable habitat outside of the PCA within the DPS boundaries (see Figure 1 above). Of this, 17,292 sq km (6,676 sq mi) are on National Forest lands. About 10 to 16 percent of the population of female grizzly bears with cubs occurs outside the PCA (Schwartz *et al.* 2006b, pp. 64–66). Management decisions on USDA Forest Service lands will continue to consider potential impacts on grizzly bear habitat and will be managed so as to maintain the habitat conditions necessary to support a recovered grizzly bear population (USDA Forest Service 2006b, p. 26). Approximately 79 percent of suitable habitat outside the PCA on National Forest lands within the DPS is currently designated a Wilderness Area (6,799 sq km (2,625 sq mi)), a Wilderness Study Area (708 sq km (273 sq mi)), or an Inventoried Roadless Area (6,179 sq km (2,386 sq mi). The amount of designated Wilderness Area, Wilderness Study Area, and Inventoried Roadless Area within each National Forest ranges from 56 to 90 percent, depending upon the forest. This large area of widely distributed habitat allows for continued population expansion and provides

additional resiliency to environmental change.

Wilderness areas outside of the PCA are considered secure because they are protected from new road construction by Federal legislation. In addition to restrictions on road construction, the Wilderness Act of 1964 (Pub. L. 88–577) also protects designated wilderness from permanent human habitation and increases in developed sites. The Wilderness Act allows livestock allotments existing before the passage of the Wilderness Act and mining claims staked before January 1, 1984, to persist within wilderness areas, but no new grazing permits or mining claims can be established after these dates. If pre-existing mining claims are pursued, the plans of operation are subject to Wilderness Act restrictions on road construction, permanent human habitation, and developed sites.

Wilderness study areas are designated by Federal land management agencies (e.g., USDA Forest Service) as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as permanent wilderness areas. This means that individual wilderness study areas are protected from new road construction by Forest Plans. As such, they are safeguarded from decreases in grizzly bear security. Furthermore, activities such as timber harvest, mining, and oil and gas development are much less likely to occur because the road networks required for these activities are unavailable. However, because these lands are not congressionally protected, they could experience changes in management prescription with Forest Plan revisions.

Inventoried Roadless Areas currently provide 4,891 sq km (1,888 sq mi) of secure habitat for grizzly bears outside of the PCA within the DPS boundaries. A USDA Forest Service Interim Directive (69 FR 42648, July 16, 2004) which instructs National Forests to preserve the ''roadless characteristics'' of roadless areas remained in effect until November 2006. In September 2006, a Federal court remanded the 2005 State Petitions for Inventoried Roadless Area Management Rule (70 FR 25653–25662, May 13, 2005) and reinstated the 2001 Roadless Areas Conservation Rule (66 FR 3244–3273, January 12, 2001) (see Factor D below for a more complete discussion of this court decision and the two different Federal Rules issued regarding Roadless Area Management). The 2001 Roadless Areas Conservation Rule prohibits road construction, road re-construction, and timber harvest in Inventoried Roadless Areas (66 FR 3244–3273, January 12, 2001). This restriction on road building makes mining activities and oil and gas production much less likely because access to these resources becomes cost-prohibitive or impossible without new roads. Potential changes in the management of these areas are not anticipated, but are discussed further under Factor D.

An estimated 7,195 sq km (2,778 sq mi) of suitable habitat outside the PCA on USDA Forest Service lands within the DPS could experience permanent or temporary changes in road densities. Because grizzly bears will remain on the USDA Forest Service Sensitive Species list after delisting and will be classified as a ''species of concern'' (USDA Forest Service 2006b, p. 26) under the 2005 USDA Forest Service Planning Regulations, any increases in roads on National Forests would have to comply with National Forest Management Act and be subject to the NEPA process considering potential impacts to grizzly bears.

Importantly, all three State grizzly bear management plans recognize the importance of areas that provide security for grizzly bears in suitable habitat outside of the PCA within the DPS boundaries on Federal lands. Although State management plans apply to all suitable habitat outside of the PCA, habitat management on public lands is directed by Federal land management plans, not State management plans. The Montana and Wyoming plans recommend limiting average road densities to 1.6 km/2.6 sq km (1 mi/sq mi) or less in these areas (MTFWP 2002, pp. 32–34; WGFD 2005, pp. 22–25). Both States have similar standards for elk habitat on State lands and note that these levels of motorized access benefit a variety of wildlife species while maintaining reasonable public access. Similarly, the Idaho State plan recognizes that management of motorized access outside the PCA should focus on areas that have road densities of 1.6 km/2.6 sq km (1 mi/sq mi) or less. The area most likely to be occupied by grizzly bears outside the PCA in Idaho is on the Caribou-Targhee National Forest. The 1997 Targhee Forest Plan includes motorized access standards and prescriptions outside the PCA with management prescriptions that provide for long-term security in 59 percent of existing secure habitat outside of the PCA (USDA Forest Service 2006a, pp. 78, 109).

In suitable habitat outside the PCA within the DPS boundaries, there are roughly 150 active cattle allotments and 12 active sheep allotments (USDA Forest Service 2004, p. 129). The Targhee Forest closed two of these sheep allotments in 2004 (USDA Forest Service 2006a, p. 168). The USDA Forest Service will allow these allotments within suitable habitat to persist along with other existing livestock allotments outside of suitable habitat. Although conflicts with livestock have the potential to result in mortality for grizzly bears, the Strategy will prevent mortality from exceeding established sustainable mortality limits and preclude population level impacts. The Strategy directs the Study Team to monitor and spatially map all grizzly bear mortalities (both inside and outside the PCA), causes of death, the source of the problem, and alter management to maintain a recovered population and prevent the need to relist the population under the Act (U.S. Fish and Wildlife Service 2007, pp. 31–34).

There are over 500 developed sites on the 6 National Forests in the areas identified as suitable habitat outside the PCA within the DPS boundaries (USDA Forest Service 2004, p. 138). Grizzly bear/human conflicts at developed sites are the most frequent reason for management removals (Servheen *et al.* 2004, p. 21). Existing USDA Forest Service food storage regulations for these areas will continue to minimize the potential for grizzly bear/human conflicts through food storage requirements, outreach, and education. The number and capacity of developed sites will be subject to management direction established in Forest Plans. Should the Study Team determine developed sites are related to increases in mortality beyond the sustainable limits discussed above, they may recommend closing specific developed sites or otherwise altering management in the area in order to maintain a recovered population and prevent the need to relist the population under the Act. Due to the USDA Forest Service's commitment to manage National Forest lands in the GYA such that a viable grizzly bear population is maintained (U.S. Fish and Wildlife Service 2007, pp. 42–43; USDA Forest Service 2006b, pp. iii, A–6), we do not expect livestock allotments or developed sites in suitable habitat outside of the PCA to reach densities that are likely to threaten the Yellowstone DPS in all or a significant portion of its range in the foreseeable future.

Less than 19 percent (3,213 sq km (1,240 sq mi)) of suitable habitat outside the PCA within the DPS boundaries on

USDA Forest Service land allows surface occupancy for oil and gas development and 11 percent (1,926 sq km (744 sq mi)) has both suitable timber and a management prescription that allows scheduled timber harvest. The primary impacts to grizzly bears associated with timber harvest and oil and gas development are increases in road densities, with subsequent increases in human access, grizzly bear/human encounters, and human-caused grizzly bear mortalities (McLellan and Shackleton 1988, pp. 458–459; McLellan and Shackleton 1989, pp. 377–379; Mace *et al.* 1996, pp. 1402–1403). Although seismic exploration associated with oil and gas development or mining may disturb denning grizzly bears (Harding and Nagy 1980, p. 278; Reynolds *et al.* 1986, pp. 174–175), actual den abandonment is rarely observed, and there has been no documentation of such abandonment by grizzly bears in the GYA. Additionally, only a small portion of this total land area will contain active projects at any given time, if at all. For example, among the roughly 1,926 sq km (744 sq mi) identified as having both suitable timber and a management prescription that allows timber harvest, from 2000 to 2002, an average of only 5 sq km (2 sq mi) was actually logged annually (USDA Forest Service 2004, p. 118). Similarly, although nearly 3,213 sq km (1,240 sq mi) of suitable habitat on National Forest lands allow surface occupancy for oil and gas development, there currently are no active wells inside these areas (USDA Forest Service 2004, pp. 170–171).

Ultimately, the six affected National Forests (the Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Custer, Gallatin, and Shoshone) will manage the number of roads, livestock allotments, developed sites, timber harvest projects, and oil and gas wells outside of the PCA in suitable habitat to allow for a viable grizzly bear population and ensure that the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range within the foreseeable future. Because the grizzly bear will be classified as a sensitive species (or a species of concern when Forest Management Plans are again revised using the 2005 USDA Forest Service planning regulations and the USDA Forest Service Manual), land management activities will be managed so as to a provide for the needs of a recovered population. Any road construction, timber harvest, or oil and gas projects would require compliance with the NEPA and the National Forest Management Act of 1976 (15 U.S.C. 1600), considering all potential impacts to the Yellowstone grizzly bear population and its habitat.

Rapidly accelerating growth of human populations in some areas in grizzly bear habitat within the DPS boundaries but outside of the PCA continues to define the limits of grizzly habitat, and will likely limit the expansion of the Yellowstone grizzly bear population onto private lands in some areas outside the PCA. Urban and rural sprawl (low-density housing and associated businesses) has resulted in increasing numbers of grizzly bear/human conflicts with subsequent increases in grizzly bear mortality rates. Private lands account for a disproportionate number of bear deaths and conflicts (see Figures 15 and 16 in the Strategy). Nearly 9 percent of all suitable habitat outside of the PCA is privately owned. As private lands are developed and as secure habitat on private lands declines, State and Federal agencies will work together to balance impacts from private land development (U.S. Fish and Wildlife Service 2007, p. 54). Outside the PCA, State agencies will assist non-government organizations and other entities to identify and prioritize potential lands suitable for permanent conservation through easements and other means as possible (U.S. Fish and Wildlife Service 2007, p. 54). Due to the large areas of widely distributed suitable habitat on public lands managed by agencies committed to the maintenance of a recovered grizzly bear population, human population growth on private lands is not likely to endanger the Yellowstone DPS in all or a significant portion of its range in the foreseeable future.

Summary of Factor A—In summary, the primary factors related to past habitat destruction and modification have been directly addressed through changes in management practices. Within suitable habitat, differential levels of management and protection (one standard inside the PCA and another standard for suitable habitat outside the PCA) are applied to areas based on their level of importance. Within the PCA, the most significant portion of the range where 84 to 90 percent of the females with cubs live (Schwartz *et al.* 2006b, p. 66), comprehensive protections are in place. For this area, the Service developed objective and measurable habitat criteria concerning secure habitat, human site developments, and livestock allotments which will be habitat requirements on public lands once this final rule becomes effective (U.S. Fish and Wildlife Service 2007, pp. 39–45). In addition, the Study Team, State, National Park Service, and USDA Forest Service biologists and technicians will monitor the availability and abundance of the four major foods, and of habitat value and habitat effectiveness using the Cumulative Effects Model or other appropriate methods (U.S. Fish and Wildlife Service 2007, pp. 45–52). The Coordinating Committee will respond to these monitoring data with adaptive management (Holling 1978, pp. 11–16) as per the Strategy (U.S. Fish and Wildlife Service 2007, pp. 63–64). Accordingly, the PCA, which comprises 51 percent of the suitable habitat within the DPS boundaries and is occupied by 84 to 90 percent of all females with cubs (Schwartz *et al.* 2006b, p. 64), will be a highly secure area for grizzlies upon delisting, with habitat conditions maintained at or above levels documented in 1998. Maintenance of this portion of the range, as described above, will satisfy the habitat requirements of the species relative the Yellowstone grizzly bear DPS's biological demands and is sufficient to support a recovered grizzly bear population.

Suitable habitat outside the PCA is also significant, albeit to a lesser extent, in that it allows for continued population expansion into adjacent areas of public land in the GYA, and therefore, provides additional ecological resiliency to respond to environmental change. These areas will be carefully monitored and managed to ensure that the measures of the Act are not again required. Management in this area will provide for the complex needs of both grizzly bears and humans. In suitable habitat outside the PCA on USDA Forest Service lands, 74 percent (12,860 sq km or 4,965 sq mi) is currently secure habitat, 68 percent of which (8,737 sq km or 3,373 sq mi) is likely to remain secure. Areas outside the PCA contain 10 to 16 percent of GYA's females with cubs (Schwartz *et al.* 2006b, p. 64). Management of public land outside the PCA administered by State and Federal agencies also will continue to consider potential impacts of management decisions on grizzly bear habitat. Efforts by non-government organizations and State and county agencies will seek to minimize bear/human conflicts on private lands (U.S. Fish and Wildlife Service 2007, pp. 54, 57–59). These and other conservation measures discussed in this final rule will allow for continued population expansion so that grizzly bears will likely occupy the remainder of the suitable habitat within the DPS within the foreseeable future.

A total of 88 percent of all suitable habitat within the DPS boundaries (40,293 sq km (15,557 sq mi)) is

managed by the USDA Forest Service or National Park Service. These public lands are already managed, and will continue to be managed, such that adequate habitat for the Yellowstone grizzly bear population is maintained (U.S. Fish and Wildlife Service 2007, pp. 38–56; USDA Forest Service 2006b, pp. 4–7, 26). Significant areas of the suitable habitat outside the PCA are designated as wilderness where human development actions are prohibited. For example, 2,948 sq km (1,138 sq mi) of the Wind River Range including almost all of the high elevation whitebark pine stands are in designated Wilderness Areas. Habitat and population standards described in the Strategy have been incorporated into National Park Compendiums and National Forest Land Management Plans (Yellowstone National Park 2006, p. 12; Grand Teton National Park, p. 1; USDA Forest Service 2006b, pp. 4–7, 26) (see Factor D below). Collectively, these differential levels of management and protection (one standard inside the PCA and another standard for suitable habitat outside the PCA) guarantee appropriate protective measures for each part of the significant portion of range.

Therefore, the lack of present or threatened destruction, modification, or curtailment of the Yellowstone DPS's habitat and range ensures this species is not likely to become endangered within the foreseeable future in all or a significant portion of its range. No current or foreseeable threats to habitat or range imperil the recovered status of the Yellowstone DPS. And all areas necessary for maintaining a recovered population are adequately safeguarded so that this population no longer requires the measures of the Act to protect habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No grizzly bears have been legally removed from the GYA in the last 30 years for commercial, recreational, or educational purposes. The only commercial or recreational take anticipated post-delisting is a limited, controlled hunt. The States will manage grizzly bears as a game animal, potentially with a carefully regulated hunt (for a more detailed discussion, see the State Management Plans section under Factor D below). Should such a season be implemented, all hunting mortalities will be counted toward the ecosystem-wide mortality limits for the population and will be strictly controlled to assure that mortality limits are not exceeded and the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range by this discretionary mortality source. Significant take for educational purposes is not anticipated. Mortality due to illegal poaching, defense of life and property, mistaken identity or other accidental take, and management removals are discussed under Factor C below.

Between 1980 and 1982, three accidental trap mortalities were associated with scientific research (Servheen *et al.* 2004, p. 21). Since 1982, there has not been a single capture mortality associated with research trapping in the GYA spanning more than 468 grizzly bear captures (Servheen *et al.* 2004, p. 21). Because of rigorous protocols dictating proper bear capture, handling, and drugging techniques used today, this type of scientific overutilization is not a threat to the Yellowstone grizzly bear population. The Study Team, bear biologists, and researchers will continue implementing these protocols after delisting. Therefore, mortalities associated with scientific research are likely to remain an insignificant factor in population dynamics into the foreseeable future.

C. Disease or Predation

Disease—Although grizzly bears have been documented with a variety of bacteria and other pathogens, parasites, and disease, fatalities are uncommon (LeFranc *et al.* 1987, p. 61) and do not appear to have population-level impacts on grizzly bears (Jonkel and Cowan 1971, pp. 31–32; Mundy and Flook 1973, p. 13; Rogers and Rogers 1976, p. 423). Researchers have demonstrated that some grizzly bears have been documented with brucellosis (type 4), clostridium, toxoplasmosis, canine distemper, canine parvovirus, canine hepatitis, and rabies (LeFranc *et al.* 1987, p. 61; Zarnke and Evans 1989, p. 586; Marsilio *et al.* 1997, p. 304; Zarnke *et al.* 1997, p. 474). However, based on 30 years of research by the Study Team, natural mortalities in the wild are rare (Interagency Grizzly Bear Study Team 2005, pp. 34–35) and it is likely that mortalities due to any of these bacteria or pathogens are negligible components of total mortality in the GYA. Disease is not common in grizzly bears, and has only very rarely been documented in Yellowstone grizzly bears (Craighead *et al.* 1988, p. 11). Disease is likely to remain an insignificant factor in population dynamics into the foreseeable future.

Natural Predation—Grizzly bears are occasionally killed by other wildlife. Adult grizzly bears kill cubs, sub-adults, or other adults (Stringham 1980, p. 337; Dean *et al.* 1986, pp. 208–211; Hessing and Aumiller 1994, pp. 332–335; McLellan 1994, p. 15; Schwartz *et al.* 2003b, pp. 571–572). This type of intraspecific killing seems to occur rarely (Stringham 1980, p. 337) and has only been observed among Yellowstone grizzly bears in the GYA 14 times between 1986 and 2004 (Haroldson 2005). Wolves and grizzly bears often scavenge similar types of carrion and, sometimes, will interact with each other in an aggressive manner. From 1995 through 2003, Gunther and Smith (2004, pp. 233–236) documented 96 wolf-grizzly bear interactions and 2 incidents in which wolf packs likely killed grizzly bear cubs. Overall, these types of aggressive interactions among grizzly bears or with other wildlife are rare and are likely to remain an insignificant factor in population dynamics into the foreseeable future.

Human Predation—Humans have historically been the most effective predators of grizzly bears. Excessive human-caused mortality is one of the major contributing factors to grizzly bear decline during the nineteenth and twentieth centuries (Leopold 1967, p. 30; Koford 1969, p. 95; Servheen 1990, p. 1; Servheen 1999, pp. 50–52; Mattson and Merrill 2002, pp. 1129, 1132; Schwartz *et al.* 2003b, p. 571), eventually leading to their listing as a threatened species in 1975. Grizzlies were seen as a threat to livestock and to humans and, therefore, an impediment to westward expansion. The Federal government, as well as many of the early settlers in grizzly bear country, was dedicated to eradicating large predators. Grizzly bears were shot, poisoned, and killed wherever humans encountered them (Servheen 1999, p. 50). By the time grizzlies were listed under the Act in 1975, there were only a few hundred grizzly bears remaining in the lower 48 States in less than 2 percent of their former range (U.S. Fish and Wildlife Service 1993, pp. 8–12).

From 1973 to 2002, a total of 372 known grizzly bear deaths occurred in the GYA (Haroldson and Frey 2003, p. 27). Of these, 272 (73 percent of total) were human-caused (Haroldson and Frey 2003, p. 27). Since 1975, levels of human-caused mortality have remained relatively constant (Servheen *et al.* 2004, p. 15). Although humans have been and remain the single greatest cause of mortality for grizzly bears (McLellan *et al.* 1999, pp. 914–916; Servheen *et al.* 2004, p. 21), rates of human-caused mortality have been low enough to allow Yellowstone bear population growth and range expansion (Harris *et al.* 2006, p. 48; Schwartz *et al.* 2006b, pp. 64–66). Implementation of the revised mortality limits ensure that

mortality will continue to be managed at sustainable levels. Below we consider human predation impacts including illegal poaching, defense of life and property, accidental mortality, and management removals.

We define vandal killing as poaching, which is malicious, illegal killing of a grizzly bears. People may kill grizzly bears for several reasons, including a general perception that grizzly bears in the area may be dangerous, frustration over depredations of livestock, or to protest land use and road use restrictions associated with grizzly bear habitat management (Servheen *et al.* 2004, p. 21). Regardless of the reason, poaching continues to occur. We are aware of at least 27 vandal killings in the GYA between 1980 and 2002 (Servheen *et al.* 2004, p. 21). Although this level of take occurred during a period where poaching was enforceable by Federal prosecution, we do not expect vandal killing to significantly increase after delisting.

State and Federal law enforcement agents have cooperated to ensure consistent enforcement of laws protecting grizzly bears. Currently, State and Federal prosecutors and enforcement personnel from each State and Federal jurisdiction work together to make recommendations to all jurisdictions, counties, and States, on uniform enforcement, prosecution, and sentencing relating to illegal grizzly bear kills. Upon delisting, all three affected States will classify grizzly bears of the Yellowstone population as game animals, which cannot be taken without authorization by State wildlife agencies (U.S. Fish and Wildlife Service 2007, pp. 72–75; Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, pp. 18–21; MTFWP 2002, p. 2; WGFD 2005, p. 20). In other words, it will still be illegal for private citizens to kill grizzly bears unless it is in self defense, they have a hunting license issued by State wildlife agencies, or in the Montana portion of the DPS, if a grizzly bear is caught in the act of attacking or killing livestock (87–3–130 MCA). States will continue to enforce, prosecute, and sentence poachers just as they do for any game animal such as elk, black bears, and cougars. Although it is widely recognized that poaching still occurs, this illegal source of mortality is not significant enough to hinder the continuing growth and range expansion of the Yellowstone grizzly bear population (Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2002, p. 203).

One way to address vandal killing is to change human values, perceptions, and beliefs about grizzly bears and Federal regulation of public lands (Servheen *et al.* 2004, p. 27). To address the concerns of user groups who have objections to land use restrictions that accommodate grizzly bears, Federal and State agencies market the benefits of restricting motorized access to multiple species. For example, both Montana and Wyoming have recommendations for elk habitat security similar to those for grizzly bears (less than 1.6 km/2.6 sq km (1 mi/sq mi)) and this level of motorized access meets the needs of a variety of wildlife species, while maintaining reasonable opportunities for public access. To address the concerns of citizens who feel that grizzly bears are a threat to their safety or their lifestyle, I & E programs aim to change perspectives on the danger and behavior of grizzly bears (for a detailed discussion of I & E programs, see Factor E below).

From 1980 to 2002, humans killed 49 grizzly bears in self-defense or defense of others. This constituted nearly 17 percent of known grizzly bear mortalities during this time period (Servheen *et al.* 2004, p. 21). These grizzly bear/human conflicts occurred primarily over livestock or hunter-killed carcasses, but also at camp and home sites. Federal and State agencies have many options to potentially reduce these conflicts (Servheen *et al.* 2004, p. 27). By promoting the use of pepper spray and continuing current I & E programs, many of these grizzly bear deaths may be avoided.

Humans kill grizzly bears unintentionally with vehicles or by mistaking them for other species when hunting. From 1980 to 2002, the Yellowstone grizzly bear population incurred 9 mortalities from roadkills and 13 mortalities associated with mistaken identification (totaling 9 percent of known mortality for this time period) (Servheen *et al.* 2004, p. 21). Measures to reduce vehicle collisions with grizzly bears include removing roadkill carcasses from the road so that grizzly bears are not attracted to the roadside (Servheen *et al.* 2004, p. 28). Cost-effective mitigation efforts to facilitate safe crossings by wildlife will be voluntarily incorporated in road construction or reconstruction projects on Federal lands within suitable grizzly bear habitat.

Mistaken identification of grizzly bears by black bear hunters is a manageable source of mortality. The Strategy identifies I & E programs targeted at hunters that emphasize patience, awareness, and correct identification of targets to help reduce grizzly bear mortalities from inexperienced black bear and ungulate hunters (U.S. Fish and Wildlife Service 2007, pp. 61–62). Beginning in license year 2002, the State of Montana required that all black bear hunters pass a Bear Identification Test before receiving a black bear hunting license (see *http://fwp.state.mt.us/bearid/* for more information and details). In addition, Montana and Wyoming include grizzly bear encounter management as a core subject in basic hunter education courses (WGFD 2005, p. 34; MTFWP 2002, p. 63).

Big-game hunters in the GYA are another source of mortality for grizzly bears. Between 1980 and 2002, 71 percent (35 of 49) of grizzly bears killed in self defense were hunting-related (Servheen *et al.* 2004, p. 21). These deaths occur during surprise encounters in heavy cover, at hunter-killed carcasses or gut piles, or when packing out carcasses. Elk hunters in Grand Teton National Park are required to carry pepper spray in an accessible location (WGFD 2006).

The last source of human predation on grizzly bears is associated with management removal of nuisance bears following grizzly bear/human conflicts. Effective nuisance bear management benefits the conservation of the Yellowstone grizzly bear population by promoting tolerance of grizzly bears and minimizing illegal killing of bears by citizens. The Strategy and the State grizzly bear management plans will guide nuisance bear management post-delisting. The Strategy is consistent with current protocol as described in the Guidelines (USDA Forest Service 1986, pp. 53–54), emphasizing the individual's importance to the entire population, with females continuing to receive a higher level of protection than males. Location, cause of incident, severity of incident, history of the bear, health, age, and sex of the bear, and demographic characteristics are all considered in any relocation or removal action. Upon delisting, State and National Park Service bear managers would continue to consult with each other and other relevant Federal agencies (i.e., USDA Forest Service, BLM) before any nuisance bear management decision is made, but consultation with us will no longer be required. The Strategy emphasizes removal of the human cause of the conflict when possible, or management and education actions to limit such conflicts (U.S. Fish and Wildlife Service 2007. pp. 57–60). In addition, an I & E team will continue to coordinate the development, implementation, and dissemination of programs and materials to aid in preventative management of human/bear conflicts. The Strategy recognizes that successful

management of grizzly bear/human conflicts requires an integrated, multiple-agency approach to continue to keep human-caused grizzly bear mortality within sustainable levels.

The largest increase in grizzly bear mortalities since 1994 is related to grizzly bear/human conflicts at or near developed sites (Servheen *et al.* 2004, p. 21). In fact, 20 percent (59 of 290) of known mortalities between 1980 and 2002 were related to site conflicts (Servheen *et al.* 2004, p. 21). These conflicts involved food-conditioned bears actively seeking out human sources of food or bears that are habituated to human presence seeking natural sources of food in areas that are near human structures or roads. The increase in site conflicts during the last decade is likely due to a combination of encroaching human presence coinciding with an increasing and expanding grizzly bear population. These conflicts usually involve attractants such as garbage, human foods, pet/livestock/wildlife foods, livestock carcasses, and wildlife carcasses, but also are related to attitudes and personal levels of knowledge and tolerance toward grizzly bears. Both State and Federal I & E programs are aimed primarily at reducing grizzly bear/human conflicts proactively by educating the public about potential grizzly bear attractants. Accordingly, roughly 68 percent of the total budgets of the agencies responsible for implementing the Strategy and managing the Yellowstone grizzly bear DPS post-delisting is for grizzly bear/human conflict management, outreach, and education (U.S. Fish and Wildlife Service 2007, Appendix H, p. 154). To address public attitudes and knowledge levels, I & E programs will present grizzly bears as a valuable public resource while acknowledging the potential dangers associated with them (for a detailed discussion of I & E programs, see Factor E below).

Management removals due to grizzly bear conflicts with livestock accounted for nearly 4 percent of known mortalities between 1980 and 2002 (Servheen *et al.* 2004, p. 21). Several steps to reduce livestock conflicts are currently underway. The USDA Forest Service and National Park Service are phasing out sheep allotments within the PCA as opportunities arise and, currently, only 2 active sheep allotments inside the PCA remain (USDA Forest Service 2006a, p. 167). The USDA Forest Service also has closed sheep allotments outside the PCA to resolve conflicts with species such as bighorn sheep as well as grizzly bears. Additionally, the alternative chosen by the USDA Forest Service during their Environmental Impact Statement process to amend the six national forest plans for grizzly bear habitat conservation includes direction to resolve recurring conflicts on livestock allotments through retirement of those allotments with willing permittees (USDA Forest Service 2006b, pp. 16–17). Livestock grazing permits include special provisions regarding reporting of conflicts, proper food and attractant storage procedures, and carcass removal. The USDA Forest Service monitors compliance to these special provisions associated with livestock allotments annually (Servheen *et al.* 2004, p. 28). Upon delisting, the USDA Forest Service will continue to implement these measures that minimize grizzly bear conflicts with livestock. The Strategy also recognizes that active management of individual nuisance bears is required. Removal of repeat depredators of livestock has been an effective tool for managing grizzly bear/livestock conflicts as most depredations are done by a few individuals (Jonkel 1980, p. 12; Knight and Judd 1983, p.188; Anderson *et al.* 2002, pp. 252–253).

The Study Team coordinates an annual analysis of the causes of conflicts, known and probable mortalities, and proposed management solutions (Servheen *et al.* 2004, pp. 1–29). The Yellowstone Ecosystem Subcommittee reviews these reports and initiates appropriate action if improvements in Federal or State management actions can minimize conflicts. As directed by the Strategy, upon delisting, the Study Team will continue to summarize nuisance bear control actions in their Annual Reports and the Coordinating Committee will continue with their review (U.S. Fish and Wildlife Service 2007, p. 60). The Study Team also would continue preparing annual spatial distribution maps of conflicts so that managers can identify where problems occur and compare trends in locations, sources, land ownership, and types of conflicts. This will facilitate proactive management of grizzly/human conflicts.

Summary of Factor C—Overall, from 1980 to 2002, the Yellowstone grizzly bear population incurred an average of 12.6 human-caused grizzly bear mortalities per year (Servheen *et al.* 2004, p. 21). Despite these mortalities, the Yellowstone grizzly bear population has continued to increase in size and expand its distribution in the last 2 decades (Eberhardt *et al.* 1994, pp. 361–362; Knight and Blanchard 1995, pp. 2–11; Boyce *et al.* 2001, pp. 1–11; Harris *et al.* 2006, p.48; Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2006b, pp. 64–66). Disease and natural predation are not currently a threat, nor are they likely to become a threat to the Yellowstone DPS in the foreseeable future in all or a significant portion of its range. Although humans are still directly or indirectly responsible for the majority of grizzly bear deaths in suitable habitat within the DPS boundaries, we have learned that this source of mortality can be effectively controlled through management and I & E.

We have institutionalized careful management and monitoring of human-caused mortality in the Strategy, Forest Plans, National Park management plans, and State grizzly bear management plans (see Factor D below). In addition, we revised our methodology for calculating the total allowable mortality limits (see the Recovery; Population and Demographic Management section above) to include natural mortalities and estimates of unreported/undetected deaths, so that mortality in the Yellowstone grizzly bear population can be managed at sustainable levels. Because of these actions, human sources of mortality are not currently a threat, nor are they likely to become a threat in the foreseeable future in all or a significant portion of the Yellowstone DPS's range. All significant areas are adequately protected.

D. The Inadequacy of Existing Regulatory Mechanisms

The lack of regulatory mechanisms to control take and protect habitat was a contributing factor to grizzly bear population declines (40 FR 31734–31736, July 28, 1975). Upon listing under the Act, the grizzly bear immediately benefited from a Federal regulatory framework that included prohibition of take (defined under the Act to include harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct); prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement to develop and implement a recovery plan for the species. These protective measures have improved the status of the Yellowstone grizzly bear population to the point where delisting is now appropriate.

The management of grizzly bears and their habitat draws from the laws and regulations of the Federal and State agencies in the Yellowstone DPS boundaries (U.S. Fish and Wildlife Service 2007, pp. 68–78). Forty Federal laws, rules, guidelines, strategies, and

reports and 33 State laws, statutes, and regulations are in place that apply to management of the Yellowstone grizzly bear population (U.S. Fish and Wildlife Service 2007, pp. 157–160, Appendix J). These laws and regulations provide the legal authority for controlling mortality, providing secure habitats, managing grizzly bear/human conflicts, controlling hunters, limiting access where necessary, controlling livestock grazing, maintaining I & E programs to control conflicts, monitoring populations and habitats, and requesting management and petitions for relisting if necessary.

Recovery of the Yellowstone grizzly bear population is the result of ongoing partnerships between Federal and State agencies, the governors of these States, county and city governments, educational institutions, numerous non-government organizations, private landowners, and the public who live, work, and recreate in the GYA. Just as recovery of the Yellowstone grizzly bear population could not have occurred without these excellent working relationships, maintenance of a recovered grizzly population will be the result of the continuation of these partnerships.

The Strategy is the plan which will guide the management and monitoring of the Yellowstone grizzly bear population and its habitat after delisting. It establishes a regulatory framework and authority for Federal and State agencies to take over management of the Yellowstone grizzly bear population from the Service. The Strategy also identifies, defines, and requires adequate post-delisting monitoring to maintain a healthy Yellowstone grizzly bear population (U.S. Fish and Wildlife Service 2007, pp. 25–56). The Strategy is an adaptive and dynamic document that allows for continuous updating based on new scientific information (U.S. Fish and Wildlife Service 2007, p. 14). The Strategy also has a clear response protocol that requires the agencies to respond with active management changes to deviations from the habitat and population standards in a timely and publicly accessible manner (U.S. Fish and Wildlife Service 2007, pp. 63–67). It represents a decade-long collaborative effort between us and the USDA Forest Service, National Park Service, BLM, U.S. Geological Survey, the Study Team, IDFG, MTFWP, and WGFD. State grizzly bear management plans were developed, reviewed, opened for public comment, revised, and completed in all three affected States (Idaho, Montana, and Wyoming) (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002; MTFWP 2002; WGFD 2005). These State plans were then incorporated into the Strategy to ensure that the plans and the Strategy are consistent and complementary (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The Strategy then went through a separate public comment process (65 FR 11340, March 2, 2000) before being revised and finalized. All the State and Federal agencies which are party to the agreement have signed a memorandum of understanding in which they have agreed to implement the Strategy.

The Strategy and the State plans describe and summarize the coordinated efforts required to manage the Yellowstone grizzly bear population and its habitat such that its continued conservation is ensured. The Strategy will direct management of grizzly bears inside the PCA, the most significant portion of range, whereas the State plans will cover all suitable habitat outside of the PCA. These documents specify the population, habitat, and nuisance bear standards to maintain a recovered grizzly bear population. The plans also document the regulatory mechanisms and legal authorities, policies, management, and post-delisting monitoring plans that exist to maintain the recovered grizzly bear population. Overall, the measures committed to in the Strategy and the State grizzly bear management plans provide assurances to us that adequate regulatory mechanisms exist to maintain a recovered grizzly bear population in the Yellowstone DPS after delisting (i.e., they ensure that the species is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range).

In areas of suitable habitat outside of the PCA (areas considered ''significant'' to the extent that they allow for continued population expansion into adjacent areas of public land in the GYA, and therefore, provide additional ecological resiliency to respond to environmental change), individual National Forest Plans and State grizzly bear management plans apply. Upon delisting, the USDA Forest Service will place grizzly bears on its Sensitive Wildlife Species list (USDA Forest Service 2006b, p. 26). This requires the USDA Forest Service to conduct a biological evaluation for any project which may ''result in loss of species viability or create significant trends toward Federal listing'' (USDA Forest Service Manual 2006). Under the revised Forest Planning Regulations (70 FR 1023, January 5, 2005), Yellowstone grizzly bears will be classified as a ''species of concern'' (USDA Forest Service 2006b, p. 26). This designation provides protections similar to those received when classified as a sensitive species and requires that Forest Plans include additional provisions to accommodate these species and provide adequate ecological conditions (i.e., habitats) to continue to provide for the needs of a recovered population.

The USDA Forest Service conducted a NEPA analysis and produced a Draft Environmental Impact Statement regarding the potential options available, and the effects of implementing the Strategy (USDA Forest Service 2004, p. iii). This analysis was undertaken by all six affected National Forests (Beaverhead, Bridger-Teton, Custer, Gallatin, Shoshone, and Targhee) in suitable habitat and was completed in July 2004 (accessible at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm*). The overall purpose of the Draft Environmental Impact Statement was to analyze the impacts of incorporating the habitat standards outlined in the Strategy and other relevant provisions into the Forest Plans of the six affected forests, to ensure conservation of habitat to sustain the recovered Yellowstone grizzly bear population. The USDA Forest Service Final Environmental Impact Statement and Record of Decision were released in April 2006 (USDA Forest Service 2006a, p. 1; USDA Forest Service 2006b, p. 36). The chosen alternative from the Final Environmental Impact Statement was Alternative 2-Modified to amend the Forest Plans to include all the habitat standards described in the Strategy (USDA Forest Service 2006b, p. iii). This alternative amends current Forest Plans in the GYA with the habitat standards required in the Strategy. In addition, Alternative 2-Modified includes guidance and direction for managing suitable habitat, as described in the State plans, outside of the PCA. This guidance and direction includes: a goal for accommodating grizzly bears outside the PCA; direction on managing livestock allotments with recurring conflicts through retirement of such allotments with willing permittees; direction emphasizing the use of food storage orders to minimize grizzly bear/human conflicts; a guideline to maintain, to the extent feasible, important grizzly bear food resources; and several monitoring items that will enhance habitat management outside of the PCA (USDA Forest Service 2006a, pp. 34–37). These amendments to the GYA National Forest Land Management Plans, completed within the framework

established by the 1982 planning regulations, become effective upon delisting.

Under the revised Forest Planning Regulation (70 FR 1023, January 5, 2005), future revisions to Forest Plans will be based upon a ''need for change'' approach. Under this approach, ''it is highly unlikely that any changes relating to the Yellowstone grizzly bear amendments * * * will be identified during the revision process'' (Aus 2005). ''This means that the management direction developed in the amendment(s) will be transferred to the new planning format and will not change. The bottom line is that any potential changes to management direction in either the current plans or during the revision effort will be guided by the agreements reached in the Strategy and its adaptive provisions'' (Aus 2005). In addition, we received written assurance from the Chief of the USDA Forest Service (Bosworth 2006) stating, ''It is Forest Service policy under the new 2005 planning regulations * * * to provide for both ecosystem diversity and species diversity, including providing appropriate ecological conditions if needed to help avoid the need to list under the Act. In our judgment, this management framework provides adequate regulatory mechanisms to redeem our federal agency responsibilities under the Act. This is fundamental to our mission and specifically to our commitment to grizzly bear conservation.'' Finally, ''the National Forest Management Act, requires that all projects carried out on a forest be consistent with the plans adopted under the regulations, regardless of whether they are 1982 or 2005 planning regulations'' (Bosworth 2006).

Roughly 30 percent of all suitable habitat outside of the PCA is within a designated Wilderness Area (6,799 of 22,783 sq km (2,625 of 8,797 sq mi) while another 27 percent is within an Inventoried Roadless Area (6,179 of 22,783 sq km (2,386 of 8,797 sq mi)). Another three percent of all suitable habitat outside the PCA is considered Wilderness Study Area. The Wilderness Act of 1964 does not allow road construction, new livestock allotments, or new oil, gas, and mining developments in designated Wilderness Areas; therefore, about 6,799 sq km (2,625 sq mi) of secure habitat outside of the PCA will remain secure habitat protected by adequate regulatory mechanisms. This secure suitable habitat is biologically significant to the Yellowstone DPS because it will allow population expansion into these areas that are minimally affected by humans.

The State Petitions for Inventoried Roadless Area Management Rule (70 FR 25653–25662, May 13, 2005) which replaced the Roadless Area Conservation Rule (''Roadless Rule'') (66 FR 3244–3273, Jan. 12, 2001) was overturned on September 19, 2006 (*People Of The State Of California Ex Rel. Bill Lockyer, et al.* v. *United States Department of Agriculture; The Wilderness Society, California Wilderness Coalition, et al.* v. *United States Forest Service, Dale Bosworth, et al.*, C05–03508 EDL). The State Petitions for Inventoried Roadless Area Management Rule was set aside and the Roadless Area Conservation Rule, including the Tongass Amendment, was reinstated. The USDA Forest Service was enjoined from taking any further action contrary to the Roadless Area Conservation Rule without undertaking environmental analysis consistent with the court opinion.

Even if this rule had remained in effect, the affected National Forest would have used the NEPA process and public involvement to consider the impacts any changes in Roadless Area management may have had on other resources and management goals. The USDA Forest Service would have monitored any impacts these changes may have had on habitat effectiveness, while the Study Team would have monitored any increases in grizzly bear mortality these changes may have caused. Before the 2006 court decision, the USDA Forest Service Interim Directive 1920–2004–1 regulated activities in Inventoried Roadless Areas (69 FR 42648–42649, July 16, 2004). Under this directive, little road building or timber harvest could be done in Inventoried Roadless Areas until Forest Plans were revised or amended to specifically address activities in roadless areas. The Targhee National Forest was exempt from this interim directive because it operates under a Revised Forest Plan, which addresses the management of roadless areas. Motorized access and other management activities are addressed by specific Management Prescription direction in the Revised Forest Plan. In general, this Management Prescription directs that roadless areas in the Targhee National Forest remain roadless. Similarly, a 1994 amendment to the Shoshone National Forest Plan implemented a standard for no net increase in roads (USDA Forest Service 2004, p. 73).

The National Park Service has incorporated the habitat, population, monitoring, and nuisance bear standards described in the Strategy into their Superintendent's Compendium for each affected National Park. This was completed prior to the publication of this final rule (Grand Teton National Park 2006, p. 1; Yellowstone National Park 2006, p. 12). Because the BLM manages less than 2 percent of all suitable habitats, they are not modifying existing management plans. Instead, the BLM expressed their commitment to the long-term conservation of the Yellowstone grizzly bear population by signing the memorandum of understanding in the Strategy.

The three State grizzly bear management plans direct State land management agencies to maintain or improve habitats that are important to grizzly bears and to monitor population criteria outside the PCA. Idaho, Montana, and Wyoming have developed management plans for areas outside the PCA to—(1) assure that the measures of the Act continue to be unnecessary for the grizzly bears in the Yellowstone DPS; (2) support expansion of grizzly bears beyond the PCA, into areas of biologically and socially acceptable suitable habitat; and (3) manage grizzly bears as a game animal, including allowing regulated hunting when and where appropriate. The plans for all three States were completed in 2002, and grizzly bears within the Yellowstone DPS will be incorporated into existing game species management plans after delisting.

Together, the Eastern Shoshone Tribe and the Northern Arapaho Tribe manage wildlife within the boundaries of the Wind River Reservation (see Figure 1 above). The Eastern Shoshone and Northern Arapaho Tribes have participated in Yellowstone Ecosystem Subcommittee meetings. At the 2002 Annual Tribal Consultation, organized by Yellowstone National Park, we formally briefed the Tribe about the Strategy, but the Tribe did not provide input or feedback about the Strategy, nor did they sign the memorandum of understanding in the Strategy. The Eastern Shoshone Tribe is currently working with the Service's Lander, Wyoming office to develop its own Grizzly Bear Management Plan. We anticipate that the Tribal management plan will allow for grizzly bear occupancy of suitable habitat on Tribal land and cooperation on managing and monitoring population parameters. Less than 3 percent of all suitable habitats (1,360 sq km (525 sq mi)) are potentially affected by Tribal decisions, so their management would never constitute a threat to the Yellowstone grizzly bear population. Their management plan will facilitate grizzly bear occupancy in areas of suitable habitat on the Wind River

Reservation and would allow grizzly bears greater access to high-elevation whitebark pine and army cutworm moths, thus allowing for additional resiliency of the Yellowstone DPS in response to changing environmental conditions.

Once this final rule becomes effective, the Strategy will be implemented, and the Coordinating Committee will replace the Yellowstone Ecosystem Subcommittee as the lead entity coordinating implementation of the habitat and population standards, and monitoring (U.S. Fish and Wildlife Service 2007, p. 63). Similar to the Yellowstone Ecosystem Subcommittee, the Coordinating Committee members include representatives from Yellowstone and Grand Teton National Parks, the six affected National Forests, BLM, U.S. Geological Survey, IDFG, MTFWP, WGFD, one member from local county governments within each State, and one member from each Native American Tribe within suitable habitat. All meetings will be open to the public. Besides coordinating management, research, and financial needs for successful conservation of the Yellowstone grizzly bear population, the Coordinating Committee will review the Study Team's Annual Reports and review and respond to any deviations from habitat or population standards. The Coordinating Committee will decide on management recommendations to be implemented by appropriate member agencies to rectify problems and to assure that the habitat and population standards will be met and maintained.

The Strategy's habitat standards are the 1998 levels of secure habitat, developed sites, livestock allotments, and habitat effectiveness (U.S. Fish and Wildlife Service 2007, p. 38). The Strategy signatories have agreed that if there are deviations from any population or habitat standard, the Coordinating Committee will implement a Biology and Monitoring Review to be carried out by the Study Team. A Biology and Monitoring Review will be triggered by any of the following causes—(1) a total population estimate of less than 500, as indicated by a $Chao_2$ estimate (Keating *et al.* 2002, pp. 167–170) of less than 48 females with cubs-of-the-year, for 2 consecutive years; (2) exceedance of the 9 percent total mortality limit for independent females for 2 consecutive years; (3) exceedance of the total mortality limits for independent males or dependent young for 3 consecutive years; (4) failure to meet any of the habitat standards described in the Strategy pertaining to levels of secure habitat, new developed sites, and number of livestock allotments in any given year; or (5) failure to receive adequate funding to fully implement the monitoring and management requirements of the Strategy in any given year.

A Biology and Monitoring Review is led by the Study Team and will examine habitat management, population management, or monitoring efforts of participating agencies with an objective of identifying the source or cause of failing to meet a habitat or demographic goal. This review also will provide management recommendations to correct any such deviations. If the Biology and Monitoring Review is triggered by inadequate funding, the Review would focus on whether this fiscal short-coming was a threat to the implementation of the Strategy to such an extent that it required that the measures of the Act would be necessary to assure the recovered status of the Yellowstone DPS. If the Review is triggered by failure to meet a population goal, the Review would involve a comprehensive review of vital rates including survival rates, litter size, litter interval, grizzly bear/human conflicts, and mortalities. The Study Team will attempt to identify the reason behind any variation in vital rates such as habitat conditions, vandal killings, excessive roadkill, etc., and determine if the reasons that the measures of the Act are necessary to assure the recovered status of the population. Similarly, if the Review was triggered by failure to meet a habitat standard, the Review would examine what caused the failure, whether this requires that the measures of the Act are necessary to assure the recovered status of the population, and what actions may be taken to correct the problem. This Review will be completed and made available to the public within 6 months of initiation.

The Coordinating Committee is to respond to a Biology and Monitoring Review with actions to address deviations from habitat standards or, if the desired population and habitat standards specified in the Strategy cannot be met in the opinion of the Coordinating Committee, then the Coordinating Committee will petition us for relisting (U.S. Fish and Wildlife Service 2007, p. 66). Although anyone can petition us for relisting, the Coordinating Committee's petition is important because it is requested by the actual management agencies in charge of the Yellowstone grizzly bear population. Additionally, the Coordinating Committee possesses the resources, data, and experience to provide us with a strong argument for the petition. Once a potential petition is received, we determine if the petition presents substantial information. If so, we conduct a full status review to determine if relisting is warranted, warranted-but-precluded by higher priority actions, or not warranted. We also could consider emergency listing, in accordance with section 4(b)(7) of the Act, if the threat were severe and immediate (16 U.S.C. 1533(g)). Such an emergency relisting would be effective the day the regulation is published in the **Federal Register** and would be effective for 240 days. During this time, a conventional rule regarding the listing of the species based on the five factors of section 4(a)(1) of the Act could be drafted and take effect after the 240-day limit on the emergency relisting has expired. Both emergency listing and the normal listing process also could be undertaken by the Service independent of the petition process.

The management of nuisance bears within the Yellowstone DPS boundaries will be based upon existing laws and authorities of State wildlife agencies and Federal land management agencies, and guided by protocols established in the Strategy and State management plans. Inside the National Parks, Yellowstone or Grand Teton National Park grizzly bear biologists will continue to respond to grizzly bear/human conflicts. In all areas outside of the National Parks, State wildlife agencies will coordinate and carry out any management actions in response to grizzly bear/human conflicts. In areas within the Yellowstone DPS boundaries that are outside of the PCA, State grizzly bear management plans will apply and State wildlife agencies will respond to and manage all grizzly bear/human conflicts. The focus and intent of nuisance grizzly bear management inside and outside the PCA will be predicated on strategies and actions to prevent grizzly bear/human conflicts. Active management aimed at individual nuisance bears will be required in both areas.

The Idaho, Montana, and Wyoming plans recognize that measures to reduce grizzly bear/human conflicts are paramount to successfully and completely addressing this issue. The State of Idaho Yellowstone Grizzly Bear Management Plan states that such measures must be given priority, as they are more effective than simply responding to problems as they occur (Idaho's Yellowstone Grizzly Bear Delisting Advisory Team 2002, p. 15). Similarly, the Grizzly Bear Management Plan for Southwestern Montana maintains that the key to dealing with all nuisance situations is prevention rather than responding after damage has

occurred (MTFWP 2002, p. 48). The Wyoming Grizzly Bear Management Plan also mandates the WGFD to emphasize long-term, non-lethal solutions, but relocation and lethal removal may occur to resolve some conflicts (WGFD 2005, pp. 25–25). All three State management plans are accessible at *http:// mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.* The ways in which the Strategy and the State plans intend to address preventative measures are described in detail in the Factor E-Human Attitudes Toward Grizzly Bear Recovery and Information & Education Efforts to Improve these Attitudes section below. All three State plans allow for preemptive relocation of grizzly bears out of areas that have a high probability of conflicting with humans or their property, including livestock. The States are committed to responding to grizzly bear/human conflicts in an efficient, timely manner.

The killing of grizzly bears in self-defense by humans will continue to be allowed under both Federal and State management plans. State management plans do not allow for legal take of grizzly bears by humans unless it is within the designated seasons and limits for grizzly mortality or, in the Montana portion of the DPS, if a grizzly bear is caught ''in the act'' of attacking or killing livestock (87–3–130 MCA). This would have to be verified by a law enforcement investigation. Any mortality due to hunting will be within the sustainable mortality limits, as described in the Strategy (U.S. Fish and Wildlife Service 2007, p. 126). The goal of such a hunting season is to reduce grizzly density in areas of high grizzly bear/human conflicts, in order to achieve management objectives so that future management actions would be reduced. A hunt would only occur if annual mortality limits specified for the Yellowstone grizzly bear population are not exceeded.

State management plans provide the necessary regulatory framework and guidelines to State wildlife agencies for managing and maintaining a recovered Yellowstone grizzly bear population in significant portions of the range outside of the PCA. By identifying the agencies responsible for nuisance bear management and responding to grizzly bear/human conflicts using a clearly orchestrated protocol, these State plans create a framework within which grizzly bears and people can both flourish. Effective nuisance bear management benefits the conservation of the Yellowstone grizzly bear population and State management plans adequately address this issue.

Summary of Factor D—In addition to the Strategy, National Park Superintendent's Plans, USDA Forest Service Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests, and State grizzly bear management plans, more than 70 State and Federal laws, regulations, rules, and guidelines are currently in place. We are confident that these mechanisms provide an adequate regulatory framework within which the Yellowstone grizzly bear population will continue to experience population stability and be appropriately distributed throughout significant portions of the range for the foreseeable future. These mechanisms also provide detailed protocols for future management, I & E programs, and monitoring for the foreseeable future. In summary, these mechanisms provide reasonable assurance to us and regulatory certainty that potential future threats to the Yellowstone grizzly bear population will not jeopardize this recovered population and ensure that the Yellowstone DPS is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Three other considerations warrant discussion as to whether or not they are likely to appreciably impact the Yellowstone grizzly bear DPS including—(1) genetic concerns; (2) invasive species, disease, and other impacts to food supply; and (3) human attitudes toward grizzly bear recovery and I & E efforts to improve these attitudes.

Genetic Management—Levels of genetic diversity in Yellowstone grizzly bears have been a concern in the past because of small population size and lack of genetic exchange with other grizzly bear populations. However, levels of genetic diversity in the Yellowstone grizzly bear population are not as low as previously feared, and the need for novel genetic material is not urgent (Miller and Waits 2003, p. 4338). Because the Yellowstone grizzly bear population is an isolated population, declines in genetic diversity over time are expected (Allendorf *et al.* 1991, p. 651; Burgman *et al.* 1993, p. 220), but will occur gradually over decades (Miller and Waits 2003, p. 4338). Miller and Waits (2003, p. 4338) state, ''In our opinion, it is unlikely that genetic factors will have substantial effect on the viability of the Yellowstone grizzly over the next several decades.'' Therefore, we do not view genetic diversity as a current threat to the Yellowstone DPS. However, low levels of gene flow, as seen historically, may be necessary in the future to maintain genetic diversity within the Yellowstone DPS. In order to assure the long-term genetic health of the Yellowstone grizzly bear DPS, we have considered genetic issues for the period beyond the next several decades.

Miller and Waits (2003, p. 4338) recommend that in order to avoid negative, short-term genetic effects associated with small population size, the effective population size (i.e., the number of breeding individuals in an idealized population that would show the same amount of change in allele frequencies due to random genetic drift or the same amount of inbreeding as the population under consideration) of the Yellowstone grizzly bear DPS should remain above 100 animals, and this will likely be achieved by maintaining a total population size above 400 animals. In response to this recommendation, the Strategy states that it is the goal of the implementing agencies to maintain the total population size at or above 500 animals to assure that the effective population size does not decline to less than 100 (U.S. Fish and Wildlife Service 2007, p. 26).

Miller and Waits (2003, p. 4338) state that the genetic diversity necessary for the long-term genetic health of the population can only be maintained through gene flow from other grizzly bear populations, either through translocation or natural connectivity. Our DPS policy does not require complete geographic or reproductive isolation among populations, and allows for some limited interchange among population segments considered to be discrete (61 FR 4722). Although movement of just a few individuals between populations may be sufficient to prevent loss of genetic diversity, movement of a few individuals would not be sufficient to create or maintain significant demographic connectivity between grizzly bear populations. We believe that there is currently no connectivity between the Yellowstone DPS and other grizzly bear populations. Future efforts to maintain genetic diversity, either through translocation or natural connectivity, may provide for genetic exchange among grizzly bear populations but is unlikely to result in the Yellowstone DPS becoming no longer markedly separate from other grizzly bear populations. Natural connectivity will continue to be monitored after delisting. To document natural connectivity, Federal and State agencies will continue to monitor bear movements on the northern periphery of the Yellowstone DPS boundaries and

the southern edges of the NCDE using radio-telemetry and will collect genetic samples from all captured or dead bears to document gene flow between these two ecosystems. Such movement will be detected by using an ''assignment test'' which identifies the area from which individuals are most likely to have originated based on their unique genetic signature (Paetkau *et al.* 1995, p. 348; Waser and Strobeck 1998, p. 43; Paetkau *et al.* 2004, p. 56; Proctor *et al.* 2005, pp. 2410–2412). This technique also has the ability to identify bears that may be the product of reproduction between Yellowstone and NCDE bears (Dixon *et al.* 2006, p. 158). In addition to monitoring for gene flow and movements, we will continue interagency efforts to complete the linkage zone task in the Recovery Plan (U.S. Fish and Wildlife Service 1993, pp. 24–26) to provide and maintain movement opportunities for grizzly bears, and reestablish natural connectivity and gene flow between the Yellowstone grizzly bear DPS and other grizzly bear populations.

Experimental and theoretical data suggest that one to two effective migrants per generation is an appropriate level of gene flow to maintain or increase the level of genetic diversity in isolated populations (Mills and Allendorf 1996, pp. 1510, 1516; Newman and Tallmon 2001, pp. 1059–1061; Miller and Waits 2003, p. 4338). We have defined an effective migrant as an individual that emigrates into an isolated population from an outside area, survives, breeds, and whose offspring survive (we further discuss this issue in Issue 8 under subheading R in the Summary of Public Comments section above). Based on Miller and Waits (2003, p. 4338), the Strategy recommends that if no movement or successful genetic interchange is detected by 2020, two effective migrants from the NCDE be translocated into the Yellowstone grizzly bear population every 10 years (i.e., one generation) to maintain current levels of genetic diversity (U.S. Fish and Wildlife Service 2007, p. 37). Based on previous attempts in other grizzly bear recovery ecosystems to augment the grizzly bear population (Kasworm *et al.* in press, pp. 6–7), the Service recognizes that it may take several re-located bears to equal one or two effective migrants. Each bear that would be relocated from the NCDE into the GYA would be radio-collared and monitored to determine if additional translocations were necessary. In this way, we can be certain that genetic impoverishment will not become a threat to the Yellowstone grizzly bear DPS.

Adequate measures to address genetic concerns will continue and, thus, genetic concerns will not adversely impact the long-term conservation of the Yellowstone grizzly bear population or its expansion into suitable habitat. The Study Team will carefully monitor movements and the presence of alleles from grizzly populations outside the Yellowstone DPS boundaries (U.S. Fish and Wildlife Service 2007, p. 37) so that reduction of genetic diversity due to the geographic isolation of the Yellowstone grizzly bear population will not become a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range in the foreseeable future.

Invasive Species, Disease, and Other Impacts to Food Supply—Four food items have been identified as major components of the Yellowstone grizzly bear population's diet (Mattson *et al.* 1991a, p. 1623). These are seeds of the whitebark pine, army cutworm moths, ungulates, and spawning cutthroat trout. These food sources may exert a positive influence on grizzly bear fecundity and survival (Mattson *et al.* 2002, p. 2) and are some of the highest sources of digestible energy available to grizzly bears in the GYA (Mealey 1975, pp. 84–86; Pritchard and Robbins 1990, p. 1647; Mattson *et al.* 1992, p. 436; Craighead *et al.* 1995, pp. 247–252). Each of these food sources is limited in distribution and subject to natural annual fluctuations in abundance and availability. Because of this natural variability, threshold values of abundance for each food have not been established. However, whitebark pine, ungulates, cutthroat trout, and army cutworm moths are all monitored either directly or indirectly on an annual basis (see Post-Delisting Monitoring Plan section below). Monitoring these important foods provides managers with some ability to predict annual seasonal bear habitat use, and estimate, prepare for, and avoid grizzly bear/human conflicts due to a shortage of one or more foods. For instance, the Coordinating Committee issues press releases annually about the abundance of fall foods, particularly whitebark pine. In poor whitebark pine years, these press releases warn people that bears might be found in lower elevation areas and that encounters with bears will likely be more common. In Yellowstone National Park, similar warnings are issued to people during poor food years when they obtain their backcountry permits and, in some years, warning signs are posted at trailheads.

While there is much debate about the rates at which carbon dioxide levels, atmospheric temperatures, and ocean temperatures will rise, the Intergovernmental Panel on Climate Change (IPCC), a group of leading climate scientists commissioned by the United Nations, concluded there is a general consensus among the world's best scientists that climate change is occurring (Intergovernmental Panel on Climate Change 2001, pp. 2–3; Intergovernmental Panel on Climate Change 2007, p. 4). The twentieth century was the warmest in the last 1,000 years (Inkley *et al.* 2004, pp. 2–3) with global mean surface temperature increasing by 0.4 to 0.8 degrees Celsius (0.7 to 1.4 degrees Fahrenheit). These increases in temperature were more pronounced over land masses as evidenced by the 1.5 to 1.7 degrees Celsius (2.7 to 3.0 degrees Fahrenheit) increase in North America since the 1940s (Vincent *et al.* 1999, p.96; Cayan *et al.* 2001, p. 411). According to the IPCC, warmer temperatures increase 1.1 to 6.4 degrees Celsius (2.0 to 11.5 degrees Fahrenheit) by 2100 (Intergovernmental Panel on Climate Change 2007, pp. 10–11). The magnitude of warming in the northern Rocky Mountains has been particularly great, as indicated by an 8-day advance in the appearance of spring phenological indicators in Edmonton, Alberta, since the 1930s (Cayan *et al.* 2001, p. 400). The hydrologic regime in the northern Rockies also has changed with global climate change, and is projected to change further (Bartlein *et al.* 1997, p. 786; Cayan *et al.* 2001, p. 411; Stewart *et al.* 2004, pp. 223–224). Under global climate change scenarios, the GYA may eventually experience milder, wetter winters and warmer, drier summers (Bartlein *et al.* 1997, p. 786). Additionally, the pattern of snowmelt runoff also may change, with a reduction in spring snowmelt (Cayan *et al.* 2001, p. 411) and an earlier peak (Stewart *et al.* 2004, pp. 223–224), so that a lower proportion of the annual discharge will occur during spring and summer.

Changing climate conditions have the potential to impact several of the Yellowstone grizzly bear's food sources, including whitebark pine seeds, winter-killed ungulates, and army cutworm moths. However, the extent and rate to which each of these food sources will be impacted is difficult to foresee with any level of confidence. The specific ways in which climate change may affect each major grizzly bear food in the GYA is discussed within each of their respective sections that follow.

In response to normal changes in food supplies due to plant phenology and responses to weather (e. g., frost,

rainfall), grizzly bear annual home ranges may change in size and extent (Aune and Kasworm 1989, pp. 48–62). By expanding the distribution and range of bears into currently unoccupied suitable habitat within the DPS boundaries, as per the State plans, additional areas with additional food resources will be available. These additional habitats will provide habitat flexibility for bears to respond to changes in annual food supplies and distribution.

Regarding impacts to cutthroat trout, several factors have the potential to play significant roles on the abundance of this food source. In 1994, nonnative lake trout (*Salvelinus naymaycush*) were discovered in Yellowstone Lake (Reinhart *et al.* 2001, pp. 281–282). Lake trout are efficient predators of juvenile cutthroat trout and, on average, consume 41 cutthroat trout per year (Ruzycki *et al.* 2003, p. 23). In 1998, *Myxobolus cerebralis*, the parasite that causes whirling disease, was found in juvenile and adult cutthroat trout collected from Yellowstone Lake. The Intermountain West has experienced drought conditions for the past 6 years, which has resulted in increased water temperatures, lowered lake levels, and a reduction in peak stream flows; all of which negatively affect cutthroat trout spawning success (Koel *et al.* 2005, p. 10). This combination of lake trout, whirling disease, and drought conditions has resulted in declines in the Yellowstone cutthroat trout population, with subsequent decreases in grizzly bear fishing activity (Koel *et al.* 2005, pp. 10–11). In fact, both black and grizzly bear activity at spawning streams decreased 87 percent between 1989 and 2004 (Koel *et al.* 2005, p. 14).

Efforts to reduce introduced lake trout populations have been somewhat successful. The Yellowstone National Park managers have removed more than 100,000 lake trout since 1994, and the average size of lake trout caught has decreased, indicating that gillnetting efforts may be effective. The Yellowstone National Park managers will continue to monitor the Yellowstone Lake cutthroat trout population using fish weirs, spawning stream surveys, and hydroacoustic techniques and continue attempts to suppress nonnative lake trout in Yellowstone Lake through gillnetting, capturing on spawning grounds, and fishing regulations which target lake trout (Yellowstone National Park 2003, p. 33). The Yellowstone National Park biologists will continue to assess the impacts of nonnative lake trout on cutthroat trout populations and will provide an annual summary to the Study Team regarding the abundance of both cutthroat and lake trout.

According to Stewart *et al.* (2004, p. 223), cutthroat trout in the Yellowstone Lake drainage (a small portion of the overall range of Yellowstone cutthroat trout) may be affected by climate change and its effects on the hydrologic regime potentially causing spring runoff to occur as much as 30 to 40 days earlier and perhaps reduced scouring of streambeds. Should this scenario be realized, that would require cutthroat trout to migrate to the tributaries to spawn earlier in the spring to match their preferred streamflows, and it also would require them to return to Yellowstone Lake earlier in the summer to avoid low flows in the tributaries. Such a hypothetical change in the spawning schedule of cutthroat trout also would require a change in the time during which grizzly bears frequent the spawning streams. Young (2001) speculated that warmer water temperatures may be harmful to cutthroat trout, as evidenced by the failure of some warmer river reaches, such as the lower Tongue River, to support cutthroat populations. While some species may shift north in response to climate change, there is no evidence the introduced lake trout will be hampered by such climatic range restrictions. Despite these potential factors impacting Yellowstone cutthroat trout, a 2006 status review concluded that listing this salmonid was not warranted (71 FR 8818–8831, February 21, 2006). This status review noted that although some Yellowstone cutthroat trout populations face severe threats, overall, populations are abundant and well distributed, and that land and water management practices have significantly reduced habitat degradation.

Although the decrease in bear use of cutthroat trout corresponds temporally with cutthroat trout declines, this may not have a significant effect on the grizzly bear population because adult grizzlies that fish in spawning streams only consume, on average, between 8 and 55 trout per year (Felicetti *et al.* 2004, p. 499). The results of Felicetti *et al.* (2004, p. 499) indicate a lower dependence on this food source than previously believed (Reinhart and Mattson 1990, pp. 345–349; Mattson and Reinhart 1995, pp. 2078–2079). Of particular importance is the finding that male grizzly bear consumption of spawning cutthroat trout was five times more than average female consumption of this food (Felicetti *et al.* 2004, p. 499) and there was minimal use of cutthroat trout by female grizzly bears. Haroldson *et al.* (2005, p. 175) found that a small proportion of the Yellowstone grizzly bear population was using cutthroat trout. The number of bears using trout varied from 15 to 33 per year from 1997 to 2000 (Haroldson *et al.* 2005, p. 175). This low reliance on cutthroat trout by the grizzly bear population in general, and female bears specifically, has implications for population dynamics, and means that potential declines in this food resource are not currently, nor are they likely to become, a threat in the foreseeable future in all or a significant portion of the Yellowstone DPS's range, even if changing climate conditions cause a reduction in Yellowstone cutthroat trout abundance.

Regarding Whitebark Pine, two noteworthy factors in North America warrant consideration here, including mountain pine beetle infestation and the introduction of exotic species (Tomback *et al.* 2001, p. 13). Fire suppression and exclusion throughout most of the western United States during the twentieth century has allowed shade tolerant tree species to dominate some whitebark pine communities, thereby inhibiting natural regeneration by whitebark pine (Arno 1986, p. 93; Tomback *et al.* 2001, p. 5). These later successional whitebark pine communities are more susceptible to infestations of the native mountain pine beetle (*Dendroctonus ponderosae*) (Tomback *et al.* 2001, pp. 14–15). Their larvae feed on the inner bark, which can eventually girdle and kill trees on a landscape scale (Amman and Cole 1983, p. 12).

During the last 2 to 4 years, there has been an epidemic of mountain pine beetles in whitebark pine in the GYA (Gibson 2006, p. 1). Using aerial detection survey data, Gibson (2006, pp. 1, 3) estimated that 16 percent of the total area of whitebark pine found in the GYA (693 sq km / 4,308 sq km (268 sq mi / 1663 sq mi)) has experienced some level of mortality due to mountain pine beetles. Similarly, the Greater Yellowstone Whitebark Pine Monitoring Working Group (2006, p. 77) reported that 22 percent of their transects showed presence of mountain pine beetles. Between 2004 and 2005 they surveyed a total of 3,889 trees and found 1.4 percent of the trees (56 trees) sampled showed signs of mountain pine beetle attack (Greater Yellowstone Whitebark Pine Monitoring Working Group 2006, p. 77).

The introduction of white pine blister rust from Europe in the early 1900s also contributes to whitebark pine declines (Kendall and Arno 1990, pp. 269–270; Tomback *et al.* 2001, pp. 15–16). While there is evidence of blister rust in whitebark pines in the GYA, the blister

rust has been present for more than 50 years (McDonald and Hoff 2001, p. 210), and infection rates are still relatively low when compared to whitebark pine communities further north. The Greater Yellowstone Whitebark Pine Monitoring Working Group (2006, p. 76) estimated that after more than 50 years of presence of the pathogen in the ecosystem, roughly 25 percent of all whitebark pine trees in the GYA are currently infected to some level with the blister rust. Evidence of infection does not necessarily mean immediate mortality. Eighty percent of the rust cankers on 2,425 infected live trees were on branches as opposed to the bole of the tree. Trees with branch cankers only are less impacted than trees with bole cankers (Greater Yellowstone Whitebark Pine Monitoring Working Group 2006, p. 76) and usually produce normal cone crops. This proportion of infected trees in the Yellowstone ecosystem is much lower than in whitebark pine communities found in the nearby Bob Marshall Wilderness (83 percent) or in communities of other 5-needled pines in Colorado, in which 50 percent of pines exposed to the fungus are infected (McDonald and Hoff 2001, p. 211).

Climate change is predicted to affect several aspects of the ecology of whitebark pine, including an increase in the length of the growing season (Cayan *et al.* 2001, p. 410–411), an increase in fire frequency and severity (McKenzie *et al.* 2004, p. 893; Westerling *et al.* 2006, pp. 942–943), spatial shifts in the distribution of suitable growing sites (Bartlein *et al.* 1997, p. 788), and an increase in both mountain pine beetle (Logan and Powell 2001, pp. 165–170; Williams and Liebhold 2002, p. 95) and white pine blister rust (Koteen 2002, pp. 352–364) outbreaks. However, the ultimate impacts of climate change on whitebark pine communities, and therefore impact to the GYA bears' use of whitebark pine seeds as a primary food source, are uncertain (Kendall and Keane 2001, p. 236).

While an increased growing season may result in increased cone crops for several decades, accelerated growth of competitive species such as *Abies lasiocarpa* (subalpine fir) could eventually lead to them out competing and replacing whitebark pine (Mattson *et al.* 2001, pp. 132–133). Additionally, a changing climate may shift the overall distribution of whitebark pine north and higher in elevation, resulting in local extinction and reduced overall distribution in the GYA (Romme and Turner 1991, p. 382). Fire frequency and severity may increase with late summer droughts predicted under climate change scenarios for the GYA. These fires may be advantageous to whitebark pine through elimination of smaller, shade-tolerant competitive tree species such as subalpine fir and the creation of open sites that will be used by Clark's nutcracker (*Nucifraga columbiana*) for seed caches, the primary dispersal agent for whitebark pine (Tomback *et al.* 2001, p. 17). However, the intensity of the fire is a key factor. Low intensity fires may eliminate smaller, shade-tolerant competitive tree species such as subalpine fir, while high intensity fires may result in direct mortality of many mature whitebark pine trees (Mattson *et al.* 2001, pp. 131–132; Koteen 2002, pp. 390–396).

The most substantial way in which changing climate conditions may affect whitebark pine is through outbreaks of native mountain pine beetles that might not continue to be regulated by extremely cold winters, and an increased prevalence of white pine blister rust. As recently as 2001, Kendall and Keane (2001, p. 136), addressing primarily the effects of white pine blister rust, concluded that ''the impact of climate change on whitebark pine is inconclusive,'' even though they felt it unlikely that any whitebark pine stand would be safe from damage by blister rust under projected climate conditions. Subsequent research (Logan and Powell in review, p. 13) suggests that recent ''unprecedented outbreaks'' of bark beetles in high elevation pines have been made possible by global climate change, and other investigators have predicted that mortality caused by blister rust also will increase with warmer, wetter conditions as predicted by global climate models (Koteen 2002, pp. 379–384). The current outbreak (Gibson 2006, pp. 1–3) and past outbreaks (Logan and Powell in review, p. 4) have been associated with unusually warm temperatures which allow mountain pine beetles to complete their life cycles in one season (Logan and Powell 2001, p. 161), suggesting that predicted milder winters will result in increased loss of whitebark pine to beetle-caused mortality.

Both Gibson (2006, p. 5) and Logan *et al.* (2003, p. 136) temper their comments about the speed of spread of mountain pine beetle infestations. Logan *et al.* (2003, p. 136) caution that reporting bias (the tendency to report massive outbreaks and to disregard minor or receding infestations) may affect perceptions of the problem. Gibson (2006, p. 5) cites Furniss and Renkin (2003, p. 207), quoting from a National Park Service report on the mountain pine beetle outbreak in Yellowstone in the 1930s. The report, issued 70 years ago, stated that ''practically every stand of whitebark pine is heavily infested'' and that ''it seems inevitable that much of the park will be denuded.'' This 1930s prediction was incorrect, demonstrating the uncertainty of predicting the impacts of such pine beetle infestations.

It is not anticipated that whitebark pine will disappear entirely from the GYA in the foreseeable future. Modeling efforts have predicted that whitebark pine will remain at lower risk for mountain pine beetle attack in many high elevation habitats in the eastern portion of the GYA (Logan 2006, p. 3). Many of these high elevation mountain areas where whitebark is expected to persist (Logan 2006, p. 3) are designated Wilderness Areas where human developments are prohibited. For example, the Wind River mountain range (see Figure 1), where mountain pine beetle impacts are expected to be minimal (Logan 2006, p. 3), is within the Bridger, Popo Agie, and Fitzpatrick Wilderness Areas. This area includes of 2,948 sq km (1,138 sq mi) of protected habitat. Similarly, the eastern half of the PCA consists of the North Absaroka, Teton, and Washakie Wilderness Areas, where whitebark pine is anticipated to be at lower risk of mountain pine beetle attack in the foreseeable future (Logan 2006, p. 3). These areas should provide a large reserve area that will be minimally impacted by mountain pine beetle infestation and have only negligible human impacts for the foreseeable future.

While we remain concerned that there will be future changes in whitebark pine abundance, we believe that the specific amount of decline in whitebark pine distribution and the rate of this decline are difficult to predict with certainty. The specific response of grizzly bears to declines in whitebark cone production is even more uncertain due to the fact that bears are used to feeding on alternative foods during the regularly occurring years when whitebark cone production is minimal (Mattson *et al.* 1991a, p. 1626; Felicetti *et al.* 2003, p. 767). We believe any changes in whitebark pine production (positive or negative), either individually or in combination with other factors, are not likely to impact the Yellowstone DPS to the point where the DPS is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. While studies suggest a decrease in whitebark pine can change both grizzly bear spatial distribution and the number of bear/human conflicts (Mattson *et al.* 1992, p. 436; Knight and Blanchard 1995, p. 23; Gunther *et al.* 1997, pp. 9–

11; Gunther *et al.* 2004, p. 18), grizzly bears are opportunistic omnivores that will make behavioral adaptations regarding food acquisition (Weaver *et al.* 1996, p. 970). The wide current and projected (Logan 2006, p. 3) distribution of whitebark pine, primarily in high-elevation Wilderness Areas in the eastern part of the GYA where human development actions are prohibited, provides biologically significant habitat to grizzly bears throughout suitable habitat and increases the resiliency of the Yellowstone DPS to future changes in whitebark pine availability.

In contrast to annually available coastal salmon runs used by other grizzly bear populations, whitebark pine nut production is not an annually predictable food source. Yellowstone DPS bears commonly have high diet diversity (Mattson *et al.* 1991a, p. 1626) and use alternate foods in years of low whitebark pine nut production. During years of poor pine nut availability, 72 percent of GYA grizzly bears make minimal use of pine nuts while consuming more ungulate meat (Felicetti *et al.* 2003, p. 767) and other natural foods. Grizzly bears in the GYA are accustomed to successfully finding alternative natural foods in years when whitebark pine nuts are not available. However, because pine nuts are an important food and because they vary naturally from year to year as well as in response to insect and disease, the Study Team has been monitoring cone abundance throughout the GYA since 1980. This cone monitoring in combination with monitoring tree mortality and beetle and disease infestation rates will continue under the Strategy (U.S. Fish and Wildlife Service 2007, p 43–56, 60). We believe that this intensive, annual monitoring of foods, grizzly bear/human conflicts, survival rates for young, reproductive rates, and the causes and locations of grizzly bear mortality, as detailed in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 43–56, 60), will provide the Strategy's signatory agencies with a strong, and biologically defensible, foundation from which to implement the adaptive management (Holling 1978, pp. 11–16) actions necessary to respond to ecological changes that may impact the future of the GYA grizzly bear DPS. These management changes may involve increased habitat management and/or protection, increased mortality management, and/or a status review and emergency relisting of the population if management is unable to successfully address the problems.

In response to concerns about threats to whitebark pine in the GYA, the Coordinating Committee, a group of managers from the USDA Forest Service, National Park Service, and the Service, formed the Whitebark Pine Subcommittee in 1998 (USDA Forest Service 2006a, p. 148). The Whitebark Pine Subcommittee coordinates the implementation of restoration techniques, management responses, and the gathering of information on the status of this tree. Current work on whitebark pine includes planting in several areas, cone collection from healthy trees, silvicultural treatments to improve growth and establishment, prescribed burning to encourage natural whitebark pine seedling establishment, and surveys for healthy trees that may possess blister rust resistant genes.

In 2003 and 2004, the Whitebark Pine Subcommittee formed the Greater Yellowstone Whitebark Pine Monitoring Working Group. This is an interagency team of resource managers, statisticians, and researchers established to assess the status of whitebark pine, its threats, and restoration options in the GYA. The Whitebark Pine Monitoring Working Group monitors transects throughout the GYA annually for white pine blister rust infection, mountain pine beetle infestation, and whitebark pine survival.

Currently, there are 19 whitebark pine cone production transects within the PCA, 9 of which the Study Team has monitored on an annual basis since 1980 (Haroldson and Podruzny 2006, pp. 44–45). Additionally, the Whitebark Pine Monitoring Working Group has established more than 70 transects outside the PCA and works closely with statisticians to ensure a representative sample and strong inference (Greater Yellowstone Whitebark Pine Monitoring Working Group 2006, p. 76). Under the Strategy, the Study Team will continue monitoring whitebark pine cone production, the prevalence of white pine blister rust, and whitebark pine mortality using current methods.

Regarding impacts to ungulates, potential impacts to elk and bison (the most important ungulates to grizzlies) warrant consideration here. Grizzlies primarily consume ungulates as winter-killed carrion in the early spring, but also kill elk and bison calves opportunistically and sometimes prey upon adults weakened during the fall breeding season. Potential threats to the availability of these ungulates include brucellosis (*Brucella abortus*) and resulting management practices, chronic wasting disease (CWD), competition with other top predators for ungulates, and decreasing winter severity.

Brucellosis is a bacterial disease that causes abortion during the first pregnancy after infection in many species of mammals, including elk, bison, domestic cattle (Berger and Cain 1999, pp. 358–359), and humans (Wyoming Brucellosis Coordination Team 2005, p. 8). The disease is usually fatal to the fetus, but usually causes no lasting harm to adults, who are thereafter immune to its effects and capable of reproducing successfully. Animals are infected by eating material contaminated with the bacteria in aborted fetuses or vaginal discharges (Smith 2005, p. 7). Brucellosis is not known to negatively affect grizzly bears or any other carnivore (Reinhart *et al.* 2001, pp. 280–281). Existing vaccines were developed specifically for domestic cattle, and are not effective in preventing infection or abortion in bison or elk. Brucellosis was most likely introduced to North America in domestic cattle imported from Europe (Meagher and Meyer 1994, p. 650).

The effect of the disease itself on bison and elk populations is minimal, but the possibility of transmission from infected wildlife to domestic cattle causes economic concern for livestock producers. Removal of bison, but not elk, to control the spread of the disease to domestic cattle is currently practiced north of Yellowstone near Gardiner, Montana, and west of Yellowstone near West Yellowstone, Montana. While these removals have the potential to deprive grizzly bears of a carrion source in the spring, since many of the bison removed would have died over winter (Meagher 1973, p. 73), brucellosis is not a population-level issue for wild ungulates. The presence of brucellosis in wild populations of ungulates does not threaten this food source of grizzly bears. The potential threat to grizzly bears is created by the removal of wild bison that wander outside of Yellowstone National Park. The purpose of the Interagency Bison Management Plan, under which bison that wander outside the boundaries of Yellowstone National Park into Montana are managed, is to ''maintain a wild, free-ranging population of bison and address the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in the State of Montana'' (U.S. Department of the Interior's National Park Service and USDA Animal and Plant Health Inspection Service 2000, p. 22). In light of this goal, we do not foresee management of Yellowstone bison as a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range in the foreseeable future.

CWD is a member of a group of diseases called transmissible spongiform encephalopathies, caused by non-living proteins called prions (Peterson 2005, p. 1). The disease is

known to occur in only 4 species within the deer family including white-tailed and mule deer, elk, and moose. CWD is invariably fatal in deer and elk once they develop clinical signs, but the period between contracting the disease and death of the animal is usually 2 to 4 years (Peterson 2005, p. 3). There is no immune response and no immunization for CWD. The disease-causing prions are shed in feces and the decomposing carcasses of infected deer and elk. Prions persist in the ground for at least 2 years and infect deer and elk that eat them while foraging on low-growing vegetation or human-provided hay or hay pellets. As is the case for brucellosis, CWD transmission is facilitated by locally high densities of animals, such as those occurring at winter feed grounds (Smith 2005, p. 16). CWD has not been detected in the GYA, but recent cases have been confirmed in mule deer from Worland and Thermopolis, Wyoming, on the eastern edge of the GYA.

The prospective threat that CWD poses to grizzly bears is the potential reduction or elimination of deer and elk in the GYA. Unlike brucellosis, CWD is an emerging disease, so little empirical data exist concerning the magnitude of its effects on wild populations. In the absence of such data, modeling of the effects of the disease can generate predictions about future population sizes of deer and elk. The two modeling exercises that have been conducted so far have arrived at very different predictions. Gross and Miller (2001, p. 213) created their model assuming that transmission of CWD was frequency dependent (i.e., that the transmission rate is constant and independent of density) and predicted that the disease would drive infected populations to local extinction. Schauber and Woolf (2003, pp. 611–612) noted that all frequency dependent models, as a consequence of their assumptions, inevitably drive their populations to extinction. They felt that modeling transmission as density dependent instead (i.e., transmission rates are low when population density is low and high when density is high) was a more realistic assumption. We concur with this assumption. Under the assumption of density dependent transmission, CWD would not result in local extinction of deer or elk populations.

Overall, we do not anticipate that either of these diseases will significantly impact the availability of ungulate carcasses to grizzly bears or impact the Yellowstone DPS such that it is likely to become endangered within the foreseeable future in all or a significant portion of its range. The Strategy requires that all signatories cooperate to monitor historic ungulate carcass transects each spring. In this way, the Study Team can compare current counts of ungulate carcasses to previous years. Through monitoring of habitat features and grizzly bear population statistics, our adaptive management (Holling 1978, pp. 11–16) approach will respond to significant shortages in spring ungulate carrion, should they occur in the future.

Gray wolves (*Canis lupus*) were reintroduced to the GYA in 1995 and, since then, have flourished. Competition between grizzlies and wolves for carrion, particularly elk carcasses, in late winter and spring occurs occasionally. Servheen and Knight (1993, p. 136) reviewed the literature on wolf/grizzly competition and interviewed biologists and managers familiar with wolf/grizzly interactions in North America and Eurasia. They concluded that there was no documentation of negative influence of grizzlies on wolves or of wolves on grizzlies at the population level. However, they also concluded that the most severe competition would be likely to occur in the spring, when bears began to compete with wolves for carrion. Several investigators (Hornbeck and Horejsi 1986, p. 259; Kuzyk *et al.* 2001, pp. 75–76; Gunther and Smith 2004, pp. 233–236) have reported grizzly bears displacing wolves from carcasses and wolves displacing grizzlies from carcasses. In all but a few cases, those interactions did not result in any injury to either bears or wolves.

Wilmers and his colleagues, in a series of papers (Wilmers *et al.* 2003a pp. 914–915; Wilmers *et al.* 2003b, pp. 999–1002; Wilmers and Getz 2004, pp. 205–205; Wilmers and Getz 2005, p. 574; Wilmers and Post 2006, pp. 405–409) presented the results of modeling exercises examining the effects of wolf reintroduction on winter carrion availability to several scavenger species, including grizzly bears. The models predicted that the effect of wolves on carrion availability would be to spread carrion availability over the winter. The expected distribution of carrion in the absence of wolves would be concentrated in the months of March and April, when it was of most value to grizzlies.

One potential consequence of climate change could be a reduction in the number of elk and bison dying over-winter, thus decreasing the amount of carrion available to bears when they emerge from hibernation. Wilmers and Getz (2005, p. 574) and Wilmers and Post (2006, p. 405) predicted that impending global climate change could reduce the availability of carrion by decreasing winter severity and length. However, in ecosystems such as Yellowstone, where wolves are present, these top predators may buffer climatic change impacts to scavengers. This may occur because the remains of wolf-killed ungulates would provide a food resource to scavengers. Furthermore, increased over-winter survival would likely result in overall increases in ungulate populations, thereby providing an alternative food source to grizzly bears during poor whitebark pine years (Felicetti *et al.* 2003, p. 767).

The northern Yellowstone elk herd occupies the northern reaches of Yellowstone National Park and some adjacent USDA Forest Service and private lands in the Yellowstone River and Lamar River valleys. The size of the northern elk herd has declined from about 17,000 elk in 1995 to about 8,000 in 2004 (Vucetich *et al.* 2005, p. 261). The onset of the decline was coincident with the reintroduction of wolves, but a modeling exercise conducted by Vucetich *et al.* (2005, p. 260) attributed the decline to weather and hunting harvests, rather than wolf predation. However, Tom Lemke, a wildlife biologist for MTFWP (as cited by McMillion 2005, p. 1), felt that the existing age distribution within the herd, in which very few young animals and many old ones are present, indicated that predation on elk calves was responsible for the decline. He pointed to the decline in hunting permits for the Gardiner winter hunt, from 2,880 permits in 2000 to 100 permits in 2006, as providing a test of the hypothesis that hunting harvests were responsible for the decline of the northern herd. Radio-telemetry studies of calf mortality suggest that grizzly bears and black bears are the major predators of elk calves, rather than wolves (Barber *et al.* 2005, pp. 41–43). Whatever the cause of the decline, reduced elk numbers may have led to minor reductions in the availability of carrion to grizzly bears.

In contrast to the northern Yellowstone elk herd, some other elk herds in the GYA where wolves exist are stable to increasing. For instance, the Jackson elk herd has remained around 15,000 animals since the early 1990s (Lubow and Smith 2004, pp. 826–828) and several herds to the west of the northern Yellowstone elk herd in the Gallatin and Madison River drainages are stable to increasing (Garrott *et al.* 2005). With managers and scientists collaborating to determine the source of the potential population fluctuations and appropriate management responses, we feel confident that, although

different herds may experience differing population dynamics, the GYA will continue to support large populations of ungulates and that the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range within the foreseeable future due to a decrease in ungulate numbers.

The fourth important food source considered here is army cutworm moths. Army cutworm moths range from Alberta to New Mexico and from California to Kansas. Moths begin mating at high elevations, like the GYA, and then deposit their eggs at low elevations, such as the agricultural areas where they are exposed to pesticides. The magnitude of future pesticide use to control moths and the potential effects of pesticides on moth populations cannot be predicted, but the potential effects of pesticides on grizzly bears are better documented. Robison *et al.* (2006, pp. 1708–1710) screened samples of army cutworm moths for 32 pesticides and found either trace concentrations or undetectable concentrations that would not be harmful to grizzly bears consuming them. The populations Robison (2006, p. 86) examined were panmictic (randomly mating), which indicates that army cutworm moth populations are more likely to persist through time than similarly-sized populations that are locally genetically more distinct (Robison 2006, p. 86). Robison *et al.* (2006, p. 86) predicted that this type of genetic structure will act to maintain army cutworm moth migration patterns into the future by increasing population resiliency to local weather patterns, pesticide use, and habitat alteration.

Grizzly bears foraging at army cutworm moth aggregation sites are potentially vulnerable to disturbance by backcountry visitors. Moth aggregations are located on remote, high-elevation talus slopes, where the predominant human visitors are rock climbers and hikers. In a study of Glacier National Park grizzly bears, White *et al.* (1999, p. 150) reported that foraging bears that were disturbed by climbers spent 53 percent less time foraging on moths during observation periods. They recommended that these northern Montana climbing routes be moved to avoid displacing foraging bears. The Study Team and the WGFD will cooperate to monitor currently known moth sites, identify new moth feeding sites so that their location is known to land managers, and take appropriate management actions as necessary.

Climate change may affect army cutworm moths by changing the distribution of plants that the moths feed on or the flowering times of those plants due to an increased growing season (Woiwod 1997, pp. 152–153). Food plant distribution could be affected by shifting the range and distribution of alpine plant communities, upon which army cutworm moths feed. There is a possibility that high elevation alpine plant communities might disappear entirely in the GYA, as they have been predicted to do in Britain (Thomas and Morris 1994, pp. 50–51). However, plant communities in the GYA have a much greater elevational range in which to move than do alpine plants in Britain. Romme and Turner (1991, p. 382) predicted that alpine vegetation communities in the GYA would be reduced in overall area but not disappear entirely. Changes in the distribution of alpine plants may not affect army cutworm moths adversely since they display foraging plasticity (Burton *et al.* 1980, pp. 12–13). During years of high snow pack when talus slopes (where moths are normally found) are covered with snow all summer, the moths must be feeding on flowers in alternative lower elevation, snow-free areas. Because moths have a one year life cycle, they must be feeding and reproducing in habitats other than alpine areas in high snow pack years because they are observed in alpine areas in subsequent years when snow pack is not a limiting factor. Even under climate change scenarios in which alpine plants disappear entirely, it is likely that the lower elevation plants that support moths in high snow pack years would still be present.

Some have suggested potentially warmer temperatures and increased winter precipitation that may result from climate change could positively affect lepidopteran (i.e., the moth and butterfly order) populations (Roy *et al.* 2001, p. 214). Migratory generalist species, such as army cutworm moths, are more likely to respond positively to climate warming than sedentary habitat specialists (Warren *et al.* 2001, p. 66). However, a study of lepidopteran species in Britain, which may be similar to the highly mobile army cutworm moths in the GYA, found that human caused habitat loss (unrelated to climate change) outweighed the positive responses to longer and more productive growing seasons (Warren *et al.* 2001, p. 67).

In summary, the best scientific and commercial data available regarding grizzly bear responses to food losses suggest this issue is not a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range, nor is it likely to become one in the foreseeable future. Grizzly bears are notoriously resourceful omnivores that will make behavioral adaptations regarding food acquisition (Weaver *et al.* 1996, p. 970). Diets of grizzly bears vary among individuals, seasons, and years (Mattson *et al.* 1991a, pp. 1625–1626; Felicetti *et al.* 2003, p. 767; Felicetti *et al.* 2004, p. 499; Koel *et al.* 2005, p. 14), reflecting their flexibility in finding adequate food resources as necessary. Mattson *et al.* (1991a, p. 1625) hypothesized that grizzly bears are always sampling new foods in small quantities so that they have alternative options in years when preferred foods are scarce. In other areas such as the NCDE, where grizzly bears historically relied heavily on whitebark pine seeds, distributions and sighting records on the periphery of this ecosystem indicate that the population, at least in those areas, has continued to increase and thrive since the 1980s despite severe declines in whitebark pine communities in the last 50 years (Kendall and Keane 2001, p. 30). Similarly, although whitebark pine seed production and grizzly bear use of cutthroat trout varied dramatically in the GYA over the last three decades due to both natural and human-introduced causes (Reinhart and Mattson 1990, pp. 345–349; Felicetti *et al.* 2004, p. 499; Haroldson and Podruzny 2006, p. 45), the Yellowstone grizzly bear population has continued to increase and expand during this time period (Schwartz *et al.* 2006b, p. 66).

Because of the life history strategy of whitebark pine, which naturally exhibits extreme annual variability in cone production, grizzly bears have always had to cope with a high degree of uncertainty regarding this food resource. The potential threat from decreases in whitebark pine cone production to grizzly bears is not one of starvation, but one of larger home range size and movements in years of low or no whitebark cone production. These movement patterns may result in increased conflicts with humans and increased mortality, as well as lower reproductive success the following year as females produce smaller litters. Bear/human conflicts can be reduced through management responses and intensified I & E efforts. Possible lowered reproductive success will be detected through monitoring and mitigated in the short term by reduced mortality limits and efforts to reduce nuisance bear removals, and in the long-term by continued whitebark pine restoration and habitat management enhancing secure habitat availability in specific areas outside the PCA where healthy whitebark pine may be available.

Although numerous alternative foods are available to GYA grizzly bears such

as corms, insects, fungi, and forbs; in terms of calories or nutrition, these are inferior to the four major foods discussed above and previously in the ''Behavior'' section. In light of the potential threats to several of these important, high-energy grizzly bear foods, especially whitebark pine which has been linked to grizzly bear survival and reproduction (Mattson *et al.* 1992, p. 436; Gunther *et al.* 1997, p. 38; Gunther *et al.* 2004, p. 15; Mattson 2000, p. 120), we believe the best approach is one of adaptive management (Holling 1978, pp. 11–16). The Study Team, working with the USDA Forest Service and National Park Service will continue to monitor the abundance and distribution of major grizzly bear foods such that any decline in the grizzly bear population as a result of these declines is detected in a sufficient time and addressed through adaptive management (Holling 1978, pp. 11–16) actions by the Coordinating Committee. Because of this flexible and responsive management framework, we do not anticipate that the Yellowstone DPS is likely to become endangered in all or a significant portion of its range in the foreseeable future due to changes in its food sources.

The Study Team monitors grizzly bear mortality in relation to the abundance and distribution of all four of the major foods using measurable criteria. For instance, increases in mortality rates of radio-collared independent females are measurable criteria that could reflect decreases in food availability. Because there were no known natural mortalities of independent adult females from 1983 to 2001 (Interagency Grizzly Bear Study Team 2005, p. 35), any change in this value will be noteworthy and will be investigated thoroughly by the Study Team to determine whether it is reflective of a landscape-scale trend or simply an isolated event. Significant declines in important foods also could result in reductions in cub production and increases in cub mortality over current rates of 0.362. The Study Team not only monitors survival but also reproductive population parameters such as litter size and cub survival that are more sensitive to decreases in food quality and quantity. Because human-caused mortality, natural mortality of radio-collared bears, and numbers of cubs, and cub survival rates are all measurable criteria monitored annually by the Study Team, any biologically significant decline in important foods also would be reflected in changes in these measurable population parameters. When combined with data collected annually about the quantity and distribution of the four major foods, the Study Team will have adequate information to determine if declining food sources are affecting population trajectory.

If declines in any of the four major foods occur and, using the best available scientific data and techniques, the Study Team concludes these are related to significant increases in known and probable bear mortalities, and that such increases could threaten the grizzly population, the Study Team would recommend appropriate management responses to the Coordinating Committee, or submission of a relisting petition to us (U.S. Fish and Wildlife Service 2007, pp. 63–67). Although we believe such an outcome is unlikely, we can also relist the Yellowstone DPS independent of the petition process. This final rule and the Conservation Strategy describe a comprehensive monitoring and management system that will be in place for the Yellowstone grizzly bear DPS upon delisting. The dynamic nature of the Conservation Strategy and its regulatory framework provide us with reasonable assurance that the Yellowstone DPS is not likely to become endangered in all or a significant portion of its range in the foreseeable future.

Human Attitudes Toward Grizzly Bear Recovery and I & E Efforts to Improve these Attitudes—Public support is paramount to any successful large carnivore conservation program (Servheen 1998, p. 67). Historically, human attitudes played a primary role in grizzly bear population declines through excessive human-caused mortality. Through government-endorsed eradication programs and perceived threats to human life and economic livelihood, humans settling the West were able to effectively eliminate most known grizzly populations after only 100 years of westward expansion.

We have seen a change in public perceptions and attitudes toward the grizzly bear in the last several decades. The same government that once financially supported active extermination of the bear now uses its resources to protect the great symbol of American wildness. This change in government policy and practice is a product of changing public attitudes about the grizzly bear. Although attitudes about grizzlies vary geographically and demographically, there has been a revival of positive attitudes toward the grizzly bear and its conservation (Kellert *et al.* 1996, pp. 983–986).

Public outreach presents a unique opportunity to effectively integrate human and ecological concerns into comprehensive programs that can modify societal beliefs about, perceptions of, and behaviors toward grizzly bears. Attitudes toward wildlife are shaped by numerous factors including basic wildlife values, biological and ecological understanding of species, perceptions of individual species, and specific interactions or experiences with species (Kellert 1994, pp. 44–48; Kellert *et al.* 1996, pp. 983–986). I & E programs teach visitors and residents about grizzly bear biology, ecology, and behavior enhance appreciation for this large predator while dispelling myths about its temperament and feeding habits. Effective I & E programs have been an essential factor contributing to the recovery of the Yellowstone grizzly bear population since its listing in 1975. Being aware of specific values common to certain user groups will allow the I & E working group to disseminate appropriate materials and provide workshops that address particular values and concerns most adequately. By providing general information to visitors and targeting specific user groups about living and working in grizzly country, we believe continued coexistence between grizzly bears and humans will be accomplished.

Traditionally, residents of the GYA involved in resource extraction industries such as loggers, miners, livestock operators, and hunting guides, are the largest opponents to land-use restrictions which place the needs of the grizzly bear above human needs (Kellert 1994, p. 48; Kellert *et al.* 1996, p. 984). Surveys of these user groups have shown that they tolerate large predators when they are not seen as direct threats to their economic stability or personal freedoms (Kellert *et al.* 1996, p. 985). Delisting could increase acceptance of grizzly bears by giving local government and private citizens more discretion in decisions which affect them. Increased flexibility regarding depredating bears in areas outside of the PCA may increase tolerance for the grizzly bear by landowners and livestock operators.

Ultimately, the future of the grizzly bear will be based on the people who live, work, and recreate in grizzly habitat and the willingness and ability of these people to learn to coexist with the grizzly and to accept this animal as a cohabitant of the land. Other management strategies are unlikely to succeed without useful and innovative public I & E programs. The primary objective of the expanded public outreach program will be to proactively address grizzly/human conflicts by educating the public as to the root

causes of these conflicts and providing suggestions on how to prevent them. By increasing awareness of grizzly bear behavior and biology, we hope to enhance public involvement and appreciation of the grizzly bear.

Although many human-caused grizzly bear mortalities are unintentional (e.g., vehicle collisions, trap mortality), intentional deaths in response to grizzly bear/human conflicts are responsible for the majority of known and probable human-caused mortalities. Fortunately, this source of mortality can be reduced significantly if adequate I & E is provided to people who live, work, and recreate in occupied grizzly bear habitat. The current I & E working group has been a major component contributing to the successful recovery of the Yellowstone grizzly bear population over the last 30 years. Both Federal and State management agencies are committed to continuing to work with citizens, landowners, and visitors within the Yellowstone DPS boundaries to address the human sources of conflicts.

From 1980 through 2002, at least 36 percent (72 out of 196) of human-caused mortalities could have been avoided if adequate I & E materials had been presented, understood, and used by involved parties (Servheen *et al.* 2004, p. 15). Educating back-country and front-country users about the importance of securing potential attractants can prevent bears from becoming food conditioned and displaying subsequent unnaturally aggressive behavior. Similarly, adhering to hiking recommendations, such as making noise, hiking with other people, and hiking during daylight hours, can further reduce back-country grizzly bear mortalities by decreasing the likelihood that hikers will encounter bears.

Hunter-related mortalities may involve hunters defending their life or property because of carcasses that are left unattended or stored improperly. Grizzly bear mortalities also occur when hunters mistake grizzly bears for black bears. All of these circumstances can be further reduced with enhanced I & E programs.

Outside the PCA, State wildlife agencies recognize that the key to preventing grizzly bear/human conflicts is providing I & E to the public. State grizzly bear management plans also acknowledge that this is the most effective long-term solution to grizzly bear/human conflicts and that adequate public outreach programs are paramount to ongoing grizzly bear survival and successful coexistence with humans in the GYA so that the measures of the Act continue to not be necessary. All three States have been actively involved in I & E outreach for over a decade and their respective management plans contain chapters detailing efforts to continue current programs and expand them when possible. For example, WGFD created a formal human/grizzly bear conflict management program in July 1990 and has coordinated an extensive I & E program since then. Similarly, since 1993, the MTFWP has implemented countless public outreach efforts to minimize bear/human conflicts, and the IDFG has organized and implemented education programs and workshops focused on private and public lands on the western edge of grizzly bear habitat.

Compensating ranchers for losses caused by grizzly bears is another approach to build support for coexistence between livestock operators and grizzly bears. In cases of grizzly bear livestock depredation that have been verified by USDA Animal and Plant Health Inspection Service Wildlife Services, IDFG, MTFWP, or WGFD, affected livestock owners are compensated. Since 1997, compensation in Montana and Idaho has been provided primarily by private organizations, principally Defenders of Wildlife. The Defenders of Wildlife's Grizzly Bear Compensation Trust has paid over $140,721 to livestock operators within the Yellowstone DPS boundaries and in the northern Rockies for confirmed and probable livestock losses to grizzly bears (Johnson 2006). In Wyoming, compensation has always been paid directly by the State. Upon delisting both Idaho and Wyoming's grizzly bear management plans provide for State funding of compensation programs (Idaho's Grizzly Bear Delisting Advisory Team 2002, p. 16; WGFD 2005, p. 30). In Idaho, compensation funds will come from the secondary depredation account, and the program will be administered by the appropriate IDFG Regional Landowner Sportsman Coordinators and Regional Supervisors (Idaho's Grizzly Bear Delisting Advisory Team 2002, p. 16). In Wyoming, the WGFD will pay for all compensable damage to agricultural products as provided by State law and regulation (WGFD 2005, p. 30). The WGFD will continue efforts to establish a long-term funding mechanism to compensate property owners for livestock and apiary losses caused by grizzly bears. The Montana State management plan does not include a funding mechanism to compensate confirmed grizzly bear livestock losses, so MTFWP will continue to rely on Defenders of Wildlife and other private groups to compensate livestock operators for losses due to grizzly bears while MTFWP focuses on preventing such conflicts. However, when Defenders of Wildlife expanded their compensation program to include the GYA, they agreed to do so while the grizzly bear was listed under the Act. Internal discussions within Defenders of Wildlife have begun to determine whether their compensation program will continue in the Montana portion of the GYA after delisting occurs (Clark 2006).

Summary of Factor E—Overall, these natural and manmade factors (genetic concerns; invasive species, disease, and other potential impacts to food supply; and human attitudes toward grizzly bear recovery and I & E efforts to improve these attitudes), have the potential to be a threat to the Yellowstone grizzly bear DPS in all or a significant portion of its range in the foreseeable future. Through careful monitoring and adaptive management (Holling 1978, pp. 11–16) practices, the Study Team and the States will be able to identify and address these concerns before they become problems for the Yellowstone grizzly bear at a population level. All of these issues have been scientifically researched and considered so that an adequate management framework is in place to respond to future concerns as they arise. Due to the large amount and wide distribution of quality suitable habitat (46,035 sq km (17,774 sq mi)), the protected status of large areas of high elevation whitebark pine stands not projected to be substantially impacted by future mountain pine beetle infestations, the maintenance of grizzly bears within the PCA as a source population for peripheral areas and potential dispersers to other grizzly bear populations, the secure nature of the PCA for potential immigrants to the GYA from other grizzly bear populations, and the commitment by the responsible agencies to the maintenance of a recovered Yellowstone grizzly bear DPS, we do not anticipate that genetic isolation, decreases in major foods, or human attitudes toward grizzly bears will substantially adversely impact the Yellowstone DPS. Therefore, these issues will not impact the Yellowstone DPS such that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Conclusion of the 5-Factor Analysis

As demonstrated in our 5-factor analysis, threats to this population have been sufficiently minimized over the entire current and foreseeable range of the Yellowstone grizzly bear DPS

including all ''suitable habitat'' within the DPS boundaries, and there is no significant portion of the range where the DPS remains threatened or endangered.

Regarding Factor A, the habitat-based recovery criteria have been maintained inside the PCA since 1998 and they will continue to be maintained in perpetuity through implementation of the Strategy. The PCA will continue to serve as a source area for grizzly bears to expand into peripheral areas and unoccupied suitable habitat. The PCA will also be important in achieving connectivity with other grizzly bear populations as it provides potential dispersers to other ecosystems outside the DPS boundaries and functions as secure habitat for immigrants from other grizzly bear populations. Threats to suitable habitat outside the PCA also have been sufficiently minimized by the commitment of the USDA Forest Service to manage National Forest lands in the GYA such that a recovered Yellowstone grizzly bear population will be maintained (USDA Forest Service 2006b; pp. 4, 26). Outside of the PCA, grizzly bears will be allowed to expand into suitable habitat, as per direction in the State management plans. High-quality, suitable habitat is widely distributed throughout the GYA, providing ecological resilience for the Yellowstone DPS to respond to environmental changes. Therefore, sufficient habitat exists to ensure that the Yellowstone grizzly bear DPS is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Regarding Factor B and C, all demographic criteria relating to sustainable mortality have been, and will continue to be, met (Schwartz, in press). The threat of overutilization due to commercial, recreational, scientific, or education purposes has been removed through cooperation among management agencies that ensures a consistent approach to mortality management. Sustainable mortality limits, coordinated conflict management protocols, and conflict prevention programs ensure that the Yellowstone DPS is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Regarding Factor D, the USDA Forest Service finalized the Forest Plan Amendment for Grizzly Bear Habitat Conservation for the GYA National Forests and has incorporated this Amendment into the affected National Forests' Land Management Plans (USDA Forest Service 2006b, p. 4). Yellowstone and Grand Teton National Parks appended the habitat standards to their Park Superintendent's Compendiums, thereby assuring that these National Parks would manage habitat in accordance with the habitat standards (Grand Teton National Park 2006, p. 1; Yellowstone National Park 2006, p. 44). The State and Federal agencies' agreement to implement the Strategy's extensive guidelines inside the PCA, the USDA Forest Service's decision to classify the grizzly bear in the GYA as a species of concern, and the State management plans ensure that adequate regulatory mechanisms remain in place in all significant portions of the Yellowstone DPS' range and that it is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Regarding Factor E, the Service concludes other natural and manmade factors are not a current threat nor will they be in the foreseeable future due to widely distributed, high-quality suitable habitat that is protected by regulatory mechanisms. Intensive annual monitoring of multiple indices combined with the adaptive management approach will assure that isolation (i.e., genetic diversity or a lack of gene flow), threats to foods, and human attitudes will not impact the Yellowstone DPS such that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Our current knowledge of the health and condition of the Yellowstone grizzly bear DPS illustrates that it is now a recovered population. Counts of unduplicated females with cubs-of-the-year have increased (Knight *et al.* 1995, p. 247; Haroldson and Schwartz 2002, p. 16; Haroldson 2006a), and counts of cubs have increased (Knight and Blanchard 1995, p. 9; Knight and Blanchard 1996, p. 8; Knight *et al.* 1997, p. 2; Haroldson *et al.* 1998, p. 8; Haroldson 1999, p. 10; Haroldson 2000, p. 11; Haroldson 2001, p. 14; Haroldson and Schwartz 2002, p. 16; Haroldson 2003, p. 16; Haroldson 2004, p. 11; Haroldson 2006b, p. 12). Grizzly range and distribution has expanded (Basile 1982, pp. 3–10; Blanchard *et al.* 1992, p. 92; Schwartz *et al.* 2002, p. 203; Pyare *et al.* 2004, pp. 5–6; Schwartz *et al.* 2006b, pp. 64–66). Calculations of population trajectory derived from radio-monitored female bears demonstrate an increasing population trend at a rate of 4 to 7 percent per year between 1983 and 2002 (Eberhardt *et al.* 1994, p. 362; Knight and Blanchard 1995, pp. 18–19; Harris *et al.* 2006, p. 48), due in large part to control of female mortality. In total, this population has increased from estimates ranging from 229 (Craighead *et al.* 1974, p. 16) to 234 (Cowan *et al.* 1974, pp. 32, 36) to 312 (McCullough 1981, p. 175) individuals when listed in 1975 to more than 500 animals as of 2005 (Interagency Grizzly Bear Study Team 2006, p. 15).

At the end of 2006, the number of unduplicated females with cubs-of-the-year over a 6-year average both inside the Recovery Zone and within a 16-km (10-mi) area immediately surrounding the Recovery Zone was 41, more than 2.7 times the Recovery Plan target of 15. The Recovery Plan target for the number of unduplicated females with cubs-of-the-year (15) has been exceeded since 1988. In 2006, the 1-year total of unduplicated females with cubs-of-the-year within the entire GYA was 47 (Haroldson 2006a).

Within the Recovery Zone, the distribution of females with young, based on the most recent six years of observations in the ecosystem, was 18 out of 18 bear management units at the end of 2004. The range of this population also has increased dramatically, as evidenced by the 48 percent increase in occupied habitat since the 1970s (Schwartz *et al.* 2002, p. 203; Pyare *et al.* 2004, p. 5–6; Schwartz *et al.* 2006b, pp. 64–66). Furthermore, the Yellowstone grizzly bear population continues to expand its range and distribution today. Currently, roughly 84 to 90 percent of the sightings of females with cubs are within the PCA and about 10 to 16 percent of females with cubs have expanded out beyond the PCA within the DPS (Schwartz *et al.* 2006b, pp. 64–66). Grizzly bears now occupy 68 percent of suitable habitat within the DPS and will likely occupy the remainder of the suitable habitat within the DPS within the foreseeable future. The Yellowstone DPS now has sufficient numbers and distribution of reproductive individuals to ensure that it is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Applying the current mortality limits (Interagency Grizzly Bear Study Team 2005, pp. 6–9) to the 1999 to 2006 period, the sustainable mortality limits have not been exceeded for 3 consecutive years for males, for 3 consecutive years for dependent young, or for 2 consecutive years for independent females (Schwartz, in press). The main threat of human predation has been addressed through carefully monitored and controlled mortality limits established in the Strategy (U.S. Fish and Wildlife Service 2007, p. 126) and annually monitored and reported by the Study Team (Interagency Grizzly Bear Study Team 2005, pp. 6–9). In addition, I & E is a

main component of the program to reduce grizzly bear/human conflicts. The Yellowstone DPS now has sufficient control of mortality to ensure that it is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

The Act defines a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. The Act defines an endangered species as one that is likely to become extinct in the foreseeable future throughout all or a significant portion of its range. Based on the best scientific and commercial information available, we have determined that the Yellowstone grizzly bear DPS is recovered and no longer meets the Act's definition of threatened or endangered. Therefore, we are hereby delisting the Yellowstone grizzly bear DPS.

Petition Finding

Additionally, we announce a 90-day finding on a petition (submitted during the public comment period for the proposed rule) to list the Yellowstone grizzly bear population as endangered on the Federal List of Endangered and Threatened Wildlife under the Act and to designate critical habitat. We reviewed the petition to list the Yellowstone DPS of grizzly bears and the literature cited in the petition, and evaluated that information in relation to other pertinent literature and information available to us. All assertions of this petition are addressed either in the Summary of Public Comments and in the 5-factor analysis sections of this final rule, or in the Reassessing Methods Document's issues and responses summary. After this review and evaluation, we find that the petition and additional information in our files did not present substantial information indicating that listing the Yellowstone grizzly bear population as endangered may be warranted. Therefore, we are not initiating a status review in response to this petition.

Effects of the Rule

Promulgation of this final rule will affect the protections afforded to the Yellowstone grizzly bear DPS under the Act. Taking, interstate commerce, import, and export of grizzly bears from the Yellowstone DPS are no longer prohibited under the Act. Other State and Federal laws will still regulate take. In addition, with the removal of the Yellowstone grizzly bear DPS from the List of Endangered and Threatened Wildlife, Federal agencies are no longer required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the species' continued existence. However, actions within the PCA will still be regulated by over 70 State and Federal laws, regulations, and policies ensuring enforcement of the Strategy. Delisting the Yellowstone grizzly bear DPS is expected to have positive effects in terms of management flexibility to the States and local governments.

However, the full protections of the Act will still continue to apply to grizzly bear in other portions of the lower 48-States outside the Yellowstone DPS. Those grizzly bears will remain fully protected by the Act. There is no designated critical habitat for this species.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

To further ensure the long-term conservation of adequate grizzly bear habitat and continued recovery of the Yellowstone grizzly bear population, several monitoring programs and protocols have been developed and integrated into land management agency planning documents. The Strategy and appended State grizzly bear management plans effectively satisfy the requirements for having a Post-Delisting Monitoring Plan for the Yellowstone DPS. Monitoring programs, which we anticipate will be continued in perpetuity, will focus on assessing whether demographic standards and habitat criteria described in the Strategy are being achieved. A suite of indices will be monitored simultaneously to provide a highly sensitive system to monitor the health of the population and its habitat and to provide a sound scientific basis to respond to any changes or needs with adaptive management actions (Holling 1978, pp. 11–16). More specifically, monitoring efforts will document population trends, distribution, survival and birth rates, and the presence of alleles from grizzly populations outside the Yellowstone DPS boundaries to document gene flow into the population. Throughout the DPS boundaries, locations of grizzly bear mortalities on private lands will be provided to the Study Team for incorporation into their Annual Report. Full implementation of the Strategy by State and Federal agencies will allow for a sustainable population by managing all suitable habitat.

Within the Primary Conservation Area—As discussed in previous sections, habitat criteria established for the Yellowstone grizzly bear population will be monitored carefully and any deviations from these will be reported annually. The number and levels of secure habitat, developed sites, and livestock allotments will not be allowed to deviate from 1998 baseline measures in accordance with the implementation protocols in the Strategy.

The Study Team will prepare Annual Reports summarizing the habitat criteria and population statistics. The Study Team will be responsible for counting the number of unduplicated females with cubs-of-the-year and monitoring mortality, distribution, and the presence of alleles from grizzly populations outside the Yellowstone DPS boundaries to document gene flow into the population (U.S. Fish and Wildlife Service 2007, pp. 155–156, Appendix I). To examine reproductive rates, survival rates, causes of death, and overall population trends, the Study Team will strive to radio collar and monitor a minimum of 25 adult female grizzly bears at all times. These bears will be spatially distributed throughout the ecosystem as determined by the Study Team.

The Study Team, with participation from Yellowstone National Park, the USDA Forest Service, and State wildlife agencies, also will monitor grizzly bear habitats, foods, and impacts of humans. Documenting the abundance and distribution of the major foods will be an integral component of monitoring within the PCA as it allows managers some degree of predictive power to anticipate and avoid grizzly bear/human conflicts related to a shortage of one or more foods. Major foods, habitat value, and habitat effectiveness will be monitored according to Appendices E and I in the Strategy, and as described in Factor A of this final rule.

Outside of the Primary Conservation Area—Although State management plans are the guiding documents for management of the Yellowstone grizzly bear DPS outside of the PCA upon delisting, habitat management will primarily be the responsibility of the GYA National Forests. State wildlife agencies will be responsible for monitoring population parameters in areas outside of the PCA. The GYA

National Forests will be responsible for monitoring agreed-upon habitat parameters in suitable habitat outside the PCA, as defined by State management plans, and will calculate secure habitat values outside of the PCA every two years and submit these data for inclusion in the Study Team's annual report (USDA Forest Service 2006b, p. 6). The GYA National Forests also will monitor and evaluate livestock allotments for recurring conflicts with grizzly bears in suitable habitat outside the PCA as defined in the State plans (USDA Forest Service 2006b, p. 6). The GYA National Forests will be responsible for monitoring whitebark pine occurrence, productivity, and health in suitable habitat outside the PCA (USDA Forest Service 2006b, p. 7). All three States will document sightings of females with cubs and provide this information to the Study Team. Finally, State wildlife agencies will provide known mortality information to the Study Team, which will annually summarize this data with respect to location, type, date of incident, and the sex and age of the bear for the DPS area.

In Idaho, the IDFG will be responsible for monitoring population trends and habitat parameters. Outside of the PCA, the IDFG will establish data analysis units to facilitate monitoring of grizzly bear distribution, abundance, and mortality. Habitat criteria will be monitored within each unit but will not be established strictly for grizzly bears. Instead, habitat standards will be incorporated into current management plans for other game species. However, the IDFG will monitor food sources for grizzly bears including elk, deer, moose, Kokanee salmon, and cutthroat trout. The IDFG also will encourage and work with other land management agencies on public lands to monitor wetland and riparian habitats, whitebark pine production, important berry-producing plants, and changes in motorized access route density. On private lands, the IDFG will work with citizens, counties, and other agencies to monitor development activities and identify important spring habitat for grizzly bears, then work with landowners to minimize impacts to bears.

In Montana, the MTFWP will monitor populations using data from research, distribution changes, DNA samples, confirmed sightings, and known mortalities. The MTFWP will collect and analyze habitat data and monitor habitat changes pertaining to key grizzly bear foods, road densities, road construction and improvements, and coal bed methane activities. In addition, the MTFWP will continue to use statewide habitat programs to conserve key wildlife habitats in southwestern Montana, working closely with private landowners to conserve private lands via lease, conservation easements, or fee title acquisition.

In Wyoming, the WGFD will establish grizzly bear management units to collect and analyze demographic and distributional data. Habitat standards will be monitored in a manner consistent with those already in place for other wildlife and will not focus specifically on the habitat needs of grizzly bears. The WGFD will evaluate the effects of existing and proposed human activities in important wildlife habitat and work with land management and transportation agencies to ensure that projects do not adversely affect the grizzly bear population. Specifically, the WGFD will—(1) identify and evaluate the site-specific and cumulative effects of proposed projects; (2) monitor and recommend changes, if justified, in human activities on seasonally important wildlife habitats; (3) minimize road and site construction impacts on wildlife habitat; (4) encourage the use of native vegetation in rehabilitation projects; (5) encourage land management agencies to manage for open road densities of no more than 1.6 km/2.6 sq km (1 mi/sq mi) which benefit a suite of wildlife species; (6) recommend seasonal road closures when warranted; (7) encourage the USDA Forest Service and BLM to enforce off road/trail motorized use restrictions; and (8) focus on improving habitat quality in areas of habitually high human-caused grizzly bear mortality (WGFD 2005, pp. 22–25). In addition, the WGFD will work with the USDA Forest Service to monitor bear use of army cutworm moths and the overall status and health of whitebark pine (WGFD 2005, p. 22).

Monitoring systems in the Strategy allow for adaptive management (Holling 1978, pp. 11–16) as environmental issues change. The agencies have committed in the Strategy to be responsive to the needs of the grizzly bear through adaptive management (Holling 1978, pp. 11–16) actions based on the results of detailed annual population and habitat monitoring. These monitoring efforts would reflect the best scientific and commercial data and any new information that has become available since this delisting determination. The entire process would be dynamic so that when new science becomes available it will be incorporated into the management planning and monitoring systems outlined in the Strategy (U.S. Fish and Wildlife Service 2007, pp. 5–6). The results of this extensive monitoring would allow wildlife and land managers to identify and address potential threats preemptively thereby, allowing those managers and us to be certain that the Yellowstone grizzly bear population remains a recovered population.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget (OMB) control number 1018–0094, which expires on September 30, 2007. 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. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA, need not be prepared in connection with actions adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein is available upon request from the Grizzly Bear Recovery Coordinator (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the listing for ''Bear, grizzly'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bear, grizzly	*Ursus arctos horribilis.*	North America	U.S.A., conterminous (lower 48) States, except—(1) where listed as an experimental population; and (2) that portion of Idaho that is east of Interstate Highway 15 and north of U.S. Highway 30; that portion of Montana that is east of Interstate Highway 15 and south of Interstate Highway 90; that portion of Wyoming south of Interstate Highway 90, west of Interstate Highway 25, Wyoming State Highway 220, and U.S. Highway 287 south of Three Forks (at the 220 and 287 intersection), and north of Interstate Highway 80 and U.S. Highway 30.	T	1, 2D, 9, 759	NA	17.40(b)
Do	.....do	.....do	U.S.A. (portions of ID and MT, see 17.84(l)).	XN	706	NA	17.84(l)
*	*	*	*	*	*		*

Dated: March 20, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 07–1474 Filed 3–23–07; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
March 29, 2007

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 40

Office of Thrift Supervision

12 CFR Part 573

Federal Reserve System

12 CFR Part 216

Federal Deposit Insurance Corporation

12 CFR Part 332

National Credit Union Administration

12 CFR Part 716

Federal Trade Commission

16 CFR Part 313

Commodity Futures Trading Commission

17 CFR Part 160

Securities and Exchange Commission

17 CFR Part 248

Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 40

[Docket ID OCC–2007–0003]

RIN 1557–AC80

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Docket No. R–1280]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AD16

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 573

[Docket ID OTS–2007–0005]

RIN 1550–AC12

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

RIN 3133–AC84

FEDERAL TRADE COMMISSION

16 CFR Part 313

[Project No. 034815]

RIN 3084–AA94

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AC04

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–55497, IA–2598, IC–27755; File No. S7–09–07]

RIN 3235–AJO6

Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley 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); Federal Trade Commission (FTC); Commodity Futures Trading Commission (CFTC); and Securities and Exchange Commission (SEC).

ACTION: Proposed rule.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, FTC, CFTC, and SEC (the Agencies) are proposing amendments to their rules that implement the privacy provisions of the Gramm-Leach-Bliley Act (GLB Act), Title V, Subtitle A. These rules require financial institutions to provide initial and annual privacy notices to their customers. As required under section 728 of the Financial Services Regulatory Relief Act of 2006 (Regulatory Relief Act or Act), the Agencies are proposing a safe harbor model privacy form that financial institutions may use to provide disclosures under the privacy rules. Institutions that use notices based on the Sample Clauses currently contained in most of the privacy rules would lose the benefit of a safe harbor for compliance with respect to those notices if they are provided more than one year following the date of publication of a final rule. Similarly, institutions that use notices based on the Sample Clauses in the SEC's privacy rule could no longer rely on the guidance provided with respect to those notices if they are provided more than one year following the date of publication of a final rule.

DATES: Comments must be submitted on or before May 29, 2007.

For information regarding the effective dates of the provisions proposed in this document, see the discussion under ''Proposed Effective Dates'' in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Commenters are encouraged to use the title ''Model Privacy Form'' to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Office of the Comptroller of the Currency: 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–2007–0003'' 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.
- *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–2007–0003'' 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, 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.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* 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–2007–0003'' 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 of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R–1280, 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 *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 comments by any of the following methods:

Agency Web Site: http://www.fdic.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.

E-mail: Comments@FDIC.gov. Include ''Model Privacy Form'' 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. (EST).

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (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.

Office of Thrift Supervision: You may submit comments, identified by OTS–2007–0005, 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–2007–0005'' 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–2007–0005.

• *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–2007–0005.

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–2007–0005'' 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.

National Credit Union Administration: Comments should be directed to Mary Rupp, Secretary of the Board. 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/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule Part 716 (Model Form for Privacy Notice)'' 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, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Federal Trade Commission: All persons are invited to submit written comments. Comments should refer to ''Model Privacy Form, FTC File No. P034815'' to facilitate the organization of comments. Comments filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 135 (Annex C), 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 below. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following Web link: *https://secure.commentworks.com/ftc-modelform* (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 the Web link *https://secure.commentworks.com/ftc-modelform.* If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also 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).

Web site. The Commission will consider all comments that *www.regulations.gov* forwards to it.[2] 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 with all required fields completed, 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.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals it receives from the public comments 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.*

Commodity Futures Trading Commission: Comments should be directed to Eileen Donovan, Acting Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528 or by e-mail to *secretary@cftc.gov.*

Securities and Exchange Commission: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–09–07 and ''Model Privacy Form'' on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–09–07 and ''Model Privacy Form.'' This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *OCC:* Amy Friend, Assistant Chief Counsel, (202) 874–5200; Heidi Thomas, Special Counsel, Jonathan Mitchell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; David H. Nebhut, Director, Policy Analysis, (202) 874–5387; or Paul Utterback, NBE Compliance Specialist, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Adrianne Threatt, Counsel, Legal Division, (202) 452–3554; Jeanne Hogarth, Consumer Policies Program Manager, or Krista Ayoub, Senior Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, (202) 452–3667; or Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829 (for Paperwork Reduction Act questions only), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: David P. Lafleur, Senior Policy Analyst, Compliance Section, Division of Supervision and Consumer Protection, (202) 898–6569; or Ruth R. Amberg, Senior Counsel, (202) 898–3736, or Kimberly A. Stock, Attorney, (202) 898–3815, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ekita Mitchell, Consumer Regulations Analyst, Examinations, Supervision, and Consumer Protection, (202) 906–6451; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina Metz, Staff Attorney, (703) 518–6561, or Ross Kendall, Staff Attorney, Office of General Counsel, (703) 518–6562, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FTC: Loretta Garrison, Senior Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–3043, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Stop NJ–3158, Washington, DC 20580.

CFTC: Laura Richards, Senior Assistant General Counsel, (202) 418–5126, or Gail B. Scott, Attorney, Office of General Counsel, (202) 418–5139, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SEC: Catherine McGuire, Chief Counsel, or Brice Prince, Special Counsel, Office of the Chief Counsel, Division of Market Regulation, (202) 551–5550; or Penelope Saltzman, Branch Chief, or Vincent Meehan, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Agencies are proposing amendments to each of their rules (which are consistent and comparable) that implement the privacy provisions of the GLB Act: 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); 12 CFR part 716 (NCUA); 16 CFR part 313 (FTC); 17 CFR part 160 (CFTC); and 17 CFR part 248 (SEC) (collectively, the ''privacy rule'').[3]

I. Background

The Regulatory Relief Act was enacted on October 13, 2006.[4] Section 728 of the Act directs the Agencies to ''jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [section 503 of the GLB Act].''[5] The Regulatory Relief Act stipulates that the model form shall be a safe harbor for financial institutions

[2] An electronic comment can be filed by (1) clicking on *http://www.regulations.gov*; (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of these fields, but if they do so, their comments may not be considered.

[3] Because each Agency's privacy rule has the same section numbers, relevant sections will be cited, for example, as ''section __.6'' unless otherwise noted.

[4] Pub. L. 109–351 (Oct. 13, 2006), 120 Stat. 1966.

[5] *Id.*, adding 15 U.S.C. 6803(e). Section 728 of the Regulatory Relief Act directs the agencies named in Section 504(a)(1) of the GLB Act, 15 U.S.C. 6804(a)(1), to develop a model form. The CFTC, which did not become subject to Title V of the GLB Act until 2000, is not named in that section. The Commodity Exchange Act (''CEA'') was amended in 2000 by the Commodity Futures Modernization Act of 2000 to make the CFTC a ''federal functional regulator'' subject to the GLB Act Title V. *See* Section 5g of the CEA, 7 U.S.C. 7b–2. The CFTC interprets Section 728 of the Regulatory Relief Act as applying to it through Section 5g.

that elect to use it. Section 728 further directs that the model form shall:

(A) Be comprehensible to consumers, with a clear format and design;

(B) Provide for clear and conspicuous disclosures;

(C) Enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) Be succinct, and use an easily readable type font.

The Agencies are required to propose a model form for public comment by April 11, 2007.

A. The Gramm-Leach-Bliley Act Privacy Notices

Subtitle A of title V of the GLB Act, captioned Disclosure of Nonpublic Personal Information,[6] requires each financial institution to provide a notice of its privacy policies and practices to its customers who are consumers.[7] In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties.[8] The notices also must provide a consumer a reasonable opportunity to direct the institution generally not to share nonpublic personal information[9] about the consumer (that is, to ''opt out'') with nonaffiliated third parties other than as permitted by the statute (for example, sharing for everyday business purposes, such as processing transactions and maintaining customers' accounts, and in response to properly executed governmental requests).[10] The privacy notice must provide, where applicable under the Fair Credit Reporting Act (FCRA), a notice and an opportunity for a consumer to opt out of certain information sharing among affiliates.[11]

The privacy rule requires a financial institution to provide a privacy notice to its customers no later than when a customer relationship is formed and annually for as long as the relationship continues. The notice must accurately reflect the institution's information collection and disclosure practices and must include specific information. Section __.6 of the privacy rule requires the privacy notice to include the following:

(1) The categories of nonpublic personal information that the institution collects;

(2) With respect to both current and former customers, the categories of nonpublic personal information that it discloses and the categories of affiliates and nonaffiliated third parties to whom it discloses such information other than as permitted by the exceptions in sections __.14 and __.15;

(3) Where the institution relies on the exception in section __.13 to share nonpublic personal information (pertaining to joint marketing), the categories of information disclosed, and the categories of third parties with which the institution has contracted;

(4) Where applicable, an explanation of the consumer's right under section __.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties and the methods by which the consumer may opt out;

(5) Disclosures made under section 603(d)(2)(A)(iii) of the FCRA (pertaining to the ability to opt out of certain sharing with affiliates) and the applicable opt-out notice;

(6) The institution's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(7) Where applicable, a statement that the institution discloses nonpublic personal information to nonaffiliated third parties pursuant to the section __.14 and __.15 exceptions.

The privacy rule does not prescribe any specific format or standardized wording for these notices. Instead, institutions may design their own notices based on their individual practices provided they comply with the law and meet the ''clear and conspicuous'' standard in the statute and the privacy rule.[12] The Appendix to the privacy rule contains model language (Sample Clauses) that institutions may use in privacy notices to satisfy the privacy rule.

Financial institutions first were required to distribute privacy notices to their customers by July 1, 2001.[13] Many privacy notices in the initial effort were long and complex. In addition, because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been formatted in various ways and as a result have been difficult to compare, even among financial institutions with identical privacy policies.

In response to broad-based concerns expressed by representatives of financial institutions, consumers, privacy advocates, and members of Congress, the Agencies conducted a workshop in December 2001 to provide a forum to consider how financial institutions could provide more useful privacy notices to consumers.[14] The workshop featured panel presentations by financial institutions, consumer advocates, and communications experts, and highlighted key communication principles to improve the notices. A number of institutions, particularly those with complex information-sharing practices, described the challenges they faced in explaining their practices and the choices available to consumers in a simple fashion while meeting all of the legal requirements for notice. Some institutions described results of consumer testing and their efforts to make privacy notices clearer and more useful to consumers.

On December 30, 2003, the Agencies published an Advance Notice of Proposed Rulemaking to Consider Alternative Forms of Privacy Notices under the Gramm-Leach-Bliley Act[15] (ANPR) to solicit comment on a wide range of issues related to improving privacy notices. The Agencies sought, for example, comment on issues associated with the format, elements, and language used in privacy notices that would make the notices more accessible, readable, and useful, and whether to develop a model privacy notice that would be short and simple. The Agencies also solicited examples of

[6] Codified at 15 U.S.C. 6801–6809.

[7] 15 U.S.C. 6803(a). A ''customer'' means a consumer who has a ''customer relationship with a financial institution.'' Privacy rule, section __.3(h), SEC section 248.3(j), CFTC section 160.3(k). A ''consumer'' is ''an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.'' 15 U.S.C. 6809(9); privacy rule, section __.3(e), SEC section 248.3(g)(1), CFTC section 160.3(h)(1).

[8] 15 U.S.C. 6803(a)–(c).

[9] 15 U.S.C. 6809(4). ''Nonpublic personal information'' is generally defined as personally identifiable financial information provided by a consumer to a financial institution, resulting from any transaction or any service performed for the consumer, or otherwise obtained by the financial institution. *See* privacy rule, sections __.3(n) and (o), SEC sections 248.3(t) and (u), CFTC sections 160.3(t) and (u).

[10] 15 U.S.C. 6802; privacy rule, sections __.14 and __.15.

[11] 15 U.S.C. 1681a(d)(2)(A)(iii) (FCRA); 15 U.S.C. 6803(c)(4) (GLB Act).

[12] 15 U.S.C. 6802, 6803; privacy rule, section __.3(b), SEC 248.3(c).

[13] The CFTC was added by Section 5g of the Commodity Exchange Act, 7 U.S.C. 7b-2 (as amended by the Commodity Futures Modernization Act of 2000), on December 21, 2000, and privacy notices were required to be delivered to consumers by March 31, 2002.

[14] Get Noticed: Writing Effective Financial Privacy Notices, Interagency Public Workshop (Dec. 4, 2001), workshop transcripts and other supporting documents are available at *http://www.ftc.gov/bcp/workshops/glb/index.html.*

[15] *See* Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, 68 FR 75164 (Dec. 30, 2003), available at *http://www.ftc.gov/os/2003/12/031223anprfinalglbnotices.pdf.*

forms, model clauses, and other information, such as applicable research that has been conducted in this area. The ANPR stated that the Agencies expected that consumer testing would be a key component in the development of any specific proposals.

During January and February 2004, the Agencies met with a number of interested groups and individuals to discuss the issues raised in the ANPR.[16] The Agencies received forty-four comments in response to the ANPR.[17] While commenters expressed a variety of views on the questions posed in the ANPR, many commenters agreed that the Agencies should conduct consumer testing before proposing any alternative privacy notice.

B. The Interagency Notice Project

In the summer of 2004, six Agencies [18] agreed to launch a project to fund consumer research (Notice Project). Their goals were to identify barriers to consumer understanding of current privacy notices and to develop an alternative privacy notice, or elements of a notice, that consumers could more easily use and understand compared to current notices. When the Agencies initiated this project, they contemplated conducting the consumer research in two sequential phases. The first phase was designed as qualitative testing, that is, form development research. This research involved a series of in-depth individual consumer interviews to develop an alternative privacy notice that would be easier for consumers to use and understand. The second phase was designed as quantitative testing, to test the effectiveness of the alternative privacy notice developed in phase one among a larger number of consumers. The first phase has been completed and resulted in the model notice we are proposing for comment today. The Agencies expect to conduct the second phase of testing after receipt of comments in response to this proposal.[19]

In September 2004, the six Agencies selected Kleimann Communication Group, Inc. (Kleimann) as their contractor for the phase one form development research. The research objectives of the Notice Project included designing a privacy notice that consumers could understand and use, that facilitated comparison of sharing practices and policies across privacy notices, and that addressed all relevant legal requirements of the GLB Act and FCRA. At the outset of the research, the Agencies considered a range of possible options for the notice, including a short notice, a layered approach (highlighting key information upfront), as well as a longer fully-compliant notice. The Agencies limited the project to paper-based notices, reasoning that a successful paper notice could be readily adapted to another medium such as the Internet. The Agencies used a readable font [20] and, in order not to confound the research findings on comprehension by introducing too many variables into the test notice, expressly did not use color, logos, or other graphical designs in the test notices. Instead, the Agencies focused on formulating and testing content that consumers could understand and use in order to develop a short, simplified privacy notice that met the research objectives.

The form development phase culminated in an extensive research report released by the Agencies in March 2006. Prepared by Kleimann, ''Evolution of a Prototype Financial Privacy Notice,'' details the process by which the Agencies and Kleimann developed an alternative privacy notice.[21] As explained more fully in the Kleimann Report, over a one-year period, Kleimann conducted two focus groups followed by a series of 46 in-depth, individual interviews, conducted sequentially at seven sites around the country. The interviews tested consumers on their ability to comprehend, use, and compare notices based on variations in vocabulary, ordering of content, and format. The structure, content, ordering of the text information, and title of the proposed model form all reflect the research findings in the qualitative consumer testing.

The Agencies now are proposing the model privacy notice produced in the form development phase with some minor revisions (the proposed model form) for comment in accordance with the Regulatory Relief Act. The Agencies contemplate that the safe harbor for the proposed model form will be effective upon publication of the final rule in order to permit institutions that elect to use the form to do so immediately. The Agencies recognize that institutions may post their privacy notices on their Internet sites, as well as deliver paper or email versions to their customers. The Agencies contemplate that institutions that post a pdf version of the proposed model privacy form may obtain a safe harbor, but are requesting comment on whether to develop a Web-based design for financial institutions to use on their Internet sites, including comment on particular design and/or technical considerations.

The Agencies believe that the proposed model form meets all the requirements of the Act and is easier to understand than most privacy notices currently being disseminated. The following section describes the proposed model form and highlights some key research findings. For more detailed information on the research methodology and the form development process, commenters are encouraged to review the full Kleimann Report. The Agencies also are proposing instructions on how institutions may obtain a safe harbor by using the proposed model form, including an explanation of aspects of the form that may and may not be varied.[22] Institutions would not be able to vary content or format, other than as described in this proposal, to take advantage of the safe harbor. Moreover, institutions would not be able to include any other information in the proposed model form nor incorporate this model form into any other document.

II. The Proposed Model Form

A. The Structure

The proposed model form has either two or three pages, depending on whether the financial institution provides an opt-out. While the research showed that page one alone was adequate for comprehension and usability, page one together with page two address the legal requirements of applicable Federal financial privacy laws and increase consumer comprehension. Each of the pages of the model form is printed separately and

[16] Summaries of the outside meetings are available at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*.

[17] Public comments to the ANPR are available at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*.

[18] The six Agencies are the Board, FDIC, FTC, NCUA, OCC, and SEC. Information related to the Notice Project can be found at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*.

[19] OTS has joined the Notice Project for the phase two research.

[20] The text of the prototype notice is in 10 point BK Avenir Book font.

[21] *See* Kleimann Communication Group, Inc., Evolution of a Prototype Financial Privacy Notice: A Report on the Form Development Project (Feb. 28, 2006) (Kleimann Report). For a copy of the full report, go to *http://www.ftc.gov/privacy/privacyinitiatives/ftcfinalreport060228.pdf*. For the executive summary, go to *http://www.ftc.gov/privacy/privacyinitiatives/FTCFinalReportExecutiveSummary.pdf*.

[22] While the model form would provide a safe harbor, institutions could continue to use other types of notices that vary from the model form so long as these notices comply with the privacy rule. For example, an institution could continue to use a simplified notice as described in section __.6(c)(5) (NCUA 716.6(e)(5)) of the privacy rule if it does not have affiliates and does not intend to share nonpublic personal information with nonaffiliated third parties outside of the exceptions provided in sections __.14 and __.15.

only on one side of an 8.5 by 11 inch piece of paper because, during testing, consumers expressed a preference for the model which allowed them to view the information on pages one and two side-by-side.[23] The proposed model form in Appendix A is designed to be customized by each financial institution that elects to use it by inserting, for example, the institution's name, contact information, and information about affiliates, nonaffiliates, or joint marketing partners, if any, with which it shares personal information. In addition, the disclosure table requires that each institution complete the responses in each of the boxes provided in a manner that accurately reflects its information sharing policies and practices.

Below is one example of a completed model form for a fictional financial institution, Neptune, whose privacy policy provides for broad sharing in a manner that triggers consumer opt-out rights. For comparison, a second example is also provided for another fictional institution, Mars, whose privacy policy limits sharing and does not trigger consumer opt-out rights. Each of these institutions uses and shares personal information in different ways; thus, their responses in the disclosure table vary, as do the descriptions of their affiliates, nonaffiliates, or joint marketing partners in the definition section.[24] Importantly, since Mars does not share in a way that triggers an opt-out, the opt-out form (page 3 of the proposed model form) is not required and so is not included in the Mars notice. Thus, not every institution subject to the privacy rule will have to provide page three of the model form; only those institutions whose privacy practices require delivery of an opt-out notice or those institutions that choose to provide opt-outs beyond those required by law.

[23] The proposed model form has the opt-out options and instructions on a separate page. Staff of certain of the Agencies issued Frequently Asked Questions in December 2001 (Privacy FAQs), stating that a consumer should be able to detach a mail-in opt-out form from a privacy notice without removing text from the privacy policy. Otherwise, the institution may violate section __.9(e) of the privacy rule, which requires that a privacy policy must be provided in such a way that a customer can retain the text of the notices or obtain them later. *See* F.4 of the Privacy FAQs, available at *http://www.ftc.gov/privacy/glbact/glb-faq.htm*.

[24] The Agencies understand that many consumers are not familiar with institutions' information sharing practices. During the Notice Project's initial research, some consumers expressed concern about financial institutions changing their practices and policies without adequately informing consumers about such changes. A few consumers suggested that, at a minimum, the notices should be dated to reflect the most recent revision so consumers would know when the notice was last changed and could more easily identify the most recent policy statement. Changes to an institution's policy may be reflected in a revised notice under section __.8 of the privacy rule or in an annual notice. Some institutions highlight changes to their privacy notices in some distinctive way, so that consumers can readily identify the change. As discussed later in Section V, the Agencies invite comment on whether financial institutions should be required to alert consumers to changes in an institution's privacy practices as part of the proposed model form.

Example 1. Neptune Model Privacy Form

F A C T S	**WHAT DOES NEPTUNE DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and income ■ account balances and payment history ■ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Neptune chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Neptune share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes— information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness	Yes	Yes *(Check your choices, p. 3)*
For our affiliates to market to you	Yes	Yes *(Check your choices, p. 3)*
For nonaffiliates to market to you	Yes	Yes *(Check your choices, p. 3)*

Contact Us	Call 1-800-XXX-XXXX or go to www.neptune.com/privacy

FACTS

WHAT DOES NEPTUNE DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does Neptune notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does Neptune protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Neptune collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Our affiliates include companies with a Neptune name; financial companies, such as Orion Insurance; and nonfinancial companies, such as Saturn Marketing Agency.*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Nonaffiliates we share with can include mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *Our joint marketing partners include credit card companies.*

FACTS	WHAT DOES NEPTUNE DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone:** 1-800-XXX-XXXX— our menu will prompt you through your choices **On the web:** www.neptune.com/privacy **By mail:** mark your choices below, fill in and send form to: Neptune Privacy Department PO Box 00000 City, State 00000 **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ☐ Do not allow your affiliates to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ Do not share my personal information with nonaffiliates to market their products and services to me.

		Mail to: Neptune Privacy Department PO Box 00000 City, State 00000

Example 2. Mars Model Privacy Form

F A C T S	**WHAT DOES MARS DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and income ■ account balances and payment history ■ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Mars chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Mars share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes— information about your transactions and experiences	No	We don't share
For our affiliates' everyday business purposes— information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share

Contact Us	Call 1-800-XXX-XXXX or go to www.marsfi.com/privacy

FACTS

WHAT DOES MARS DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does Mars notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does Mars protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Mars collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Mars has no affiliates.*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Mars does not share with nonaffiliates so they can market to you.*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *Mars doesn't jointly market.*

Example 3. Illustration of Type Size for the Various Elements of the Model Form [25]

Font size: 17 point

Font size: 11 point

F A C T S

WHAT DOES [name of financial institution] **DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

Font size: 14 point

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and income
- account balances and payment history
- credit history and credit scores

Font size: 10 point

When you close your account, we continue to share information about you according to our policies.

How?

All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Font size: 10.5 point

Contact Us

Call **[toll-free telephone]** or go to **[web address]**

p. 1 of 3

B. Page One—Background Information and the Disclosure Table

Page one of the proposed model form has four parts: (1) The title; (2) an introductory section called the ''key frame,'' which provides context to help the consumer better understand the required disclosures; (3) a table that describes the types of sharing Federal law allows, which of those types of sharing the institution actually does, and whether the consumer can opt out of any type of the institution's sharing; and (4) the institution's contact information.

The research showed that the title, ''FACTS What Does [name of financial

[25] *See infra* note and accompanying text. This illustration displays the font sizes of the various elements in the model form.

institution] Do With Your Personal Information,'' is more likely to catch consumers' attention so they will read the notice. The title can be used by all institutions regardless of their information sharing practices.

The ''key frame,'' with its three short headings—Why, What, and How—is included because the research showed that, unless consumers have some basic facts about information sharing, they are less likely to understand why they are receiving a privacy notice and what to do with one. The ''Why'' box tells consumers that Federal law requires that the financial institution send the notice. The ''What'' box explains the types of personal information financial institutions collect and share.[26] The ''How'' box explains that some information sharing is necessary for all institutions in order to provide the products and services that consumers request. It also briefly explains what information consumers will find in the disclosure table below. The research found that these particular headings and the bulleted explanations enhanced consumers' understanding of the purpose of the notice, enabled them to make an informed decision about the use of their personal information, and aided their overall comprehension.

The disclosure table at the bottom of page one provides information about the financial institution's sharing practices. The research found that this table is the ''heart'' of the proposed model form, ''enabl[ing] consumers to understand the details of their financial institution's sharing practices in the context of how other financial institutions can share. It is critical for comprehension and comparability.'' [27] The table is featured on page one because it is one of the most important elements of the model form.

Key research findings were that providing this information in a table form greatly increased consumers' ability to readily identify and understand an institution's sharing practices and what, if any, choices they had to limit any of that sharing, and easily compare these practices and choices among institutions. The Agencies asked Kleimann to develop and test a ''prose'' version describing information sharing practices since such a format would be more comparable to notices currently used by financial institutions. However, the research found that the table design of the proposed model form outperformed the prose design on a variety of measures, including comprehension, comparability, and usability.[28]

The disclosure table includes a description of the possible types of sharing and uses of personal information and the associated opt-out choices that must be disclosed. The opt-out disclosures are required under: (1) Section 502(b) of the GLB Act (regarding certain sharing with nonaffiliated third parties); (2) section 603(d)(2)(A) of the FCRA (regarding sharing of creditworthiness and credit report information among affiliates); and (3) section 624 of the FCRA, as added by section 214 of the Fair and Accurate Credit Transactions Act of 2003 (Fact Act), 15 U.S.C. 1681s–3 (use of that information for marketing).[29] The table provides important context about what information sharing a financial institution actually does relative to what it could do. The research showed that the table, with its standardized content, facilitates easy comparison of information sharing practices among different institutions. The structure of the disclosure table and the reasons for sharing are designed to be consistent for all financial institutions.[30] The institution-specific information lies in the answers to the questions within each of the boxes. Accordingly, even if a financial institution does not share for one of the reasons listed in the table (for example, it has no affiliates and therefore does not share with affiliates), the institution could not exclude that reason from the table, but would answer ''No'' under ''Does [name of financial institution] share?''

The language used in the disclosure table is based on Kleimann's research. The simplified phrases describing information sharing practices were continually refined through the consumer testing process to allow consumers to better understand the information sharing and use possibilities. The laws governing the disclosure of consumers' personal information are not easily translated into short, comprehensible phrases that are also legally precise. Thus, the table in some cases uses more easily understandable short-hand terms to describe sharing practices required to be in the notice. For example, the table uses the term ''everyday business purposes'' to describe the sharing contemplated by the exceptions in sections __.14 and __.15 of the privacy rule, which does not trigger opt-out rights. The research found that consumers understood that ''everyday business purposes'' means that companies must share in some basic ways in order to provide the financial products or services that consumers request. The table also speaks in terms of the institution's own ''marketing purposes'' to capture the idea that nearly all, if not all, financial institutions share information in connection with marketing their own products and services to their customers (for example, with a service provider such as a bulk mailer or data processor) in a manner that does not trigger an opt-out right. With respect to the reasons for information sharing among affiliated companies that track the FCRA provisions [31] (the sharing of ''transaction and experience information'' and the sharing of ''other information''), the disclosure table uses ''Information about your creditworthiness'' as a short-hand term for the statutory term ''other information.''

The institution's contact information appears at the bottom of page one in

[26] The Agencies recognize that some financial institutions may not collect each type of information described in the ''What'' box. As reflected in the introductory clause, which states that the ''information [collected] can include * * *,'' the standardized terms are designed to reflect the range of information typically collected by financial institutions required to provide privacy notices under the GLB Act and FCRA, rather than the specific information collected by each particular institution, and therefore, are not to be modified to reflect an institution's particular practices. The SEC's model privacy form reflects modified terms in the ''What'' box that are intended to include the range of information typically collected by brokers, dealers, investment advisers registered with the Commission, and investment companies.

[27] *See* Kleimann Report, *supra* note , at v and 7.

[28] *See id.* at 185, 215, 256.

[29] Pub. L. 108–159, 117 Stat. 1952. Section 624 provides that information that may be shared among affiliates—including transaction and experience information and certain creditworthiness information—cannot be used for marketing purposes unless the consumer has received a notice of such use and an opportunity to opt out, and the consumer does not opt out. The Agencies have included language pertaining to this affiliate marketing provision and the related opt-out on the notice developed in the consumer research in response to comments to the ANPR. While the Agencies have not yet issued a final regulation implementing this provision of the FACT Act, they are coordinating this rulemaking with the affiliate marketing rulemaking to ensure that language addressing the section 624 opt-out as incorporated in this model form (when finalized) would be deemed to comply with the affiliate marketing rule. Institutions would not be required to include reference to this provision until a final rule for section 624 is issued and becomes effective, and only in the event that institutions choose to consolidate the 624 notice and opt-out with the GLB Act privacy notice.

[30] The reasons for sharing are grouped into three main categories. The first three reasons describe what financial institutions do with their consumers' personal information. The next three reasons describe what a financial institution's affiliates do with that information. The last reason describes what nonaffiliated companies may do with the personal information, other than acting as a service provider to or acting jointly with the financial institution (that is, outside the exceptions provided in sections __.13, __.14, and __.15). This generally means marketing by the nonaffiliated company.

[31] *See* section 603(d)(2)(A) of the FCRA.

response to consumers' preferences expressed during testing.

C. Page Two—Supplemental Information

The second page provides additional explanatory information that, in combination with page one, ensures that the notice includes all elements described in the GLB Act as implemented by the privacy rule. There is supplemental information in the form of Frequently Asked Questions (FAQs)[32] at the top and definitions below.[33] The research showed that although consumers generally understood the concepts of certain technical words, they found that the four definitions on page two provided helpful additional information that further clarified the nature and type of information sharing by a financial institution. Some of the definitions include institution-specific information required by the GLB Act. For example, an institution that has affiliates must identify the categories of its affiliates after the definition. Likewise, an institution that has no affiliates can explain after the definition that it does not have affiliates.

Examples of institution-specific information are shown for the last three definitions in the italicized print in both the Neptune and Mars forms. Thus, Neptune has affiliates with which it shares certain information and, under the definition of ''affiliates,'' Neptune includes information in italics that describes the categories of its affiliates. Since Mars has no affiliates, the Mars form states *''Mars has no affiliates.''*

D. Page Three—The Opt-Out Form

The third page provides an opt-out form, for use by those financial institutions that share in a manner that triggers consumer opt-out rights under the GLB Act or FCRA (*see* the proposed model privacy form in Appendix A and the Neptune form). Institutions using the proposed model form must include page three in their notices only if they (1) share or use information in a manner that triggers an opt-out, or (2) choose to provide opt-outs beyond what is required by law.

The opt-out page lists three common methods for opting out—by telephone, on the Web, and by mail—and summarizes the opt-out choices available to the consumer in a clear and easy-to-read format that the research found consumers appreciated. Financial institutions that provide opt-out forms are not required to provide all the opt-out choices and methods described in the Neptune opt-out form. The Agencies expect that institutions may need to tailor the opt-out page to reflect accurately the institution's particular practices.[34] The model form, for example, includes information for the customer's account number as a means of identifying both the customer and account to which the opt-out should apply. Institutions requiring consumers with multiple account numbers to list each account number to which the opt-out should apply should modify that portion of the form. Institutions requiring information other than an account number should modify that portion of the form. Institutions that allow more than 30 days from issuing the notice may insert that time period in place of the number ''30''. The proposed rule accordingly provides instructions explaining permissible variations to page three of the Neptune notice.

E. Additional Opt-Outs in the Model Form

The third column in the disclosure table in the proposed model form is intended to provide flexibility for financial institutions to include additional opt-out choices that are not required by Federal law. For example, a financial institution may give its customers the opportunity to limit sharing for joint marketing. In that case, the financial institution would answer the question ''Can you limit this sharing?'' in the far right column with ''Yes (Check your choices, p. 3)'' and would describe the additional opt-out choice on its opt-out form, for example by stating, ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution wanted to offer its customers the opportunity to opt out of its own marketing, it could provide for that option by answering ''Yes'' in the appropriate box of the disclosure table and by describing the opt-out choice on the opt-out form, for example by stating ''Do not share [or use] my personal information to market to me.'' To obtain the safe harbor for use of the proposed model form, an institution that uses the disclosure table to show any additional opt-out choice must include the opt-out form on page three to provide consumers with a method for opting out. The Agencies specifically invite comment on other opt-outs that financial institutions may provide, and on whether the Agencies should provide model language based on the opt-out provisions provided in the proposed model form.

F. Appearance of the Model Form

In addition to the requirements that the proposed model form be comprehensible, clear and conspicuous, and allow for easy comparison of privacy practices among financial institutions, the law requires that the model form use an easily readable type font. The prototype notice developed in the Agencies' phase one research and shown here as the proposed model form, reflects consideration of a number of typographical factors in the design.[35] Type size, type style, leading, x-height, serif versus sans serif,[36] upper and lower case type, along with the page layout—all play an important role in designing a typeface that is highly readable. Consumers who saw the prototype notice during the research process commented on how easy the type was to see and read.[37]

[32] Note that financial institutions should insert their names as indicated in the first three questions in this section.

[33] The FAQ box regarding sources of information does not permit a financial institution to customize the sources of information it collects. As with the standardized terms describing information the institution collects on page one, *see supra* note , the disclosure is intended to include the range of information sources typically used by institutions subject to the GLB Act and FCRA rather than the information sources used by each particular institution. The SEC's model form reflects additional terms in this box that are intended to include the range of sources of information typically used by brokers, dealers, investment advisers registered with the Commission, and investment companies.

[34] *See* note 29. For institutions that choose to consolidate the 624 notice into the model form and offer this opt-out, the italicized language accompanying the affiliate sharing opt-out choice on page three of the proposed model form is required only if an institution wants to limit the time of the opt-out period, with 5 years the minimum opt-out period required by the statute. Where an institution elects to limit the time period for which the opt-out is effective, it should look to the Agencies' affiliate marketing rule for guidance on the manner and form in which to provide any additional notice that would effectively permit a consumer to renew or extend the opt-out period.

[35] The prototype notice developed in the consumer research is 10 on 12 BK Avenir Book. The ''10 on 12'' means that the font size is 10 points, and the leading (that is, the additional space between the lines of type) is 2 points of spacing.

[36] Serif typeface has small strokes at the ends of the lines that form each letter. Sans serif typeface does not have those small strokes.

[37] Example 3 in this proposal illustrates the different font sizes used in the prototype notice for the title, headings, and key text. Thus, the word ''FACTS'' in the title is in 17-point type; the remainder of the title is in 11-point; the Why, Why, How, and Contact Us headings are in 14 point; the headings in the disclosure table, the reasons in the left column of the disclosure table, and the questions in the left column of the FAQs are in 10.5-point; and the text in the body of the form is in 10-point. This information shows the relative sizes of the various elements of the prototype and is intended only as a guide (and not a requirement) to those institutions that elect to use the proposed model form so that they can design the key

Continued

All of these factors together affect the readability of a document. Therefore, in considering these various factors for the design of an easily readable type font, the Agencies are proposing 10-point font as the minimum type size and sufficient spacing between the lines of type (leading). The Agencies are further providing general guidance on type styles.

Type size: The readability of type size is highly dependent on the selection of the type style. Some styles in 10-point font are more readable than others in 12-point font and appear larger because of their design. Accordingly, the Agencies are proposing 10-point type size as the minimum size for use on the model form.

Leading: Leading is the spacing between lines of type, measured in points. If the line spacing is too narrow, the type is hard to read. In such a case, the ascenders (such as the upward line in the letter ''h'') and descenders (such as the downward line in a ''g'') may touch, blending the lines of type and making it much harder to distinguish the letters on the page. Research on the legibility of typography indicates that people read faster when text is set with 1 to 4 points of leading.[38] The Agencies are proposing a requirement that the leading used allow for sufficient spacing between the lines, but are not mandating a specific amount. Nevertheless, the Agencies are providing these general recommendations for use with the model form: 10- or 11-point type should have between 1 and 3 points of leading. Twelve-point type should have between 2 and 4 points of leading.[39]

Type style and ''x''-height: Experts differ on the question of the most desirable type style. The model form uses both sans serif and ''monoweight'' type, and upper and lower case lettering in the body of the form. While much of the printed material in the United States and western Europe uses serif styles, Web designers are increasingly using sans serif type, as they have found that serif type is harder to read in this new medium. These changes in Web design are also beginning to affect font styles in printed materials. Accordingly, some typography designers are now using sans serif typefaces, as well as type with a uniform thickness throughout the letter (monoweight typeface), finding such typefaces easier to read than those with variable thickness. While a variety of type styles would be suitable for the model notice, the Agencies caution that institutions that use idiosyncratic fonts or highly stylized typefaces will not meet the model form safe harbor standard.

Larger x-height[40] makes a font appear larger and thus more readable, and fonts with larger x-heights are better for smaller text. Research shows that our eyes ''scan the top of the letters'' x-heights during the normal reading process, so that is where the primary identification of each letter takes place.''[41] Generally, a font with an x-height ratio of around .66 is easier to read.[42]

The Agencies are not mandating a particular type style or x-height in order for a financial institution to obtain a safe harbor. Nevertheless, based on the research, the Agencies are providing these general guidelines for type style in the model form: For typefaces with a smaller x-height, 11- or 12-point font should be used; for typefaces with a larger x-height, a 10-point font would be sufficient.[43] Fonts that satisfy the type style and x-height guidelines for the proposed model form include sans serif fonts such as Tahoma, Century Gothic, Myriad, Avant Garde, Bk Avenir Book, ITS Franklin Gothic, Arial, and Gill Sans, and serif fonts such as the Chaparral Pro Family, Minion Pro, Garamond, Monotype Bodoni, and Monotype Century.[44]

For ease of reference, the following table summarizes the recommendations discussed here for institutions that choose to use the model form and obtain the safe harbor.

If	Then use	And use	And use font with
Font is 10-point	1–3 points leading	Monoweight typeface	Large x-height sans serif (around .66 ratio).
Font is 11-point	1–3 points leading	Monoweight typeface	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).
Font is 12-point	2–4 points leading	Monoweight or variable typeface.	Smaller x-height is acceptable; either serif or sans serif (less than .66 ratio is acceptable).

G. Printing, Logos, and Color

The Agencies recognize that financial institutions have a strong interest in ensuring that documents they provide to the public have a distinctive look that may be readily recognized by consumers. Thus, a financial institution that uses the proposed model form may include its corporate logo on any of the pages, so long as the logo design does not interfere with the readability of the model form or space constraints of each page.

The model form used in the consumer testing was printed on 8.5 by 11 inch non-glossy paper, using varying shades of black ink to achieve the black and gray tones in the published prototype. The Agencies propose printing each page of the model form on one side of an 8.5 by 11 inch piece of paper so that each page of the model form can be viewed simultaneously. The Agencies seek comment on other formats that may achieve the readability and ease of use preferred by consumers.

The Agencies propose that institutions using the model form use white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color is permitted to achieve visual interest to the model form, so long as the color contrast is distinctive and the color does not detract from the form's readability. The Agencies seek comment on whether, how, and to what extent institutions that elect to use the model form will use logos and/or color.

elements, such as the headings and title, larger than the 10-point font size in the text.

[38] Karen A. Schriver, Dynamics In Document Design, 274 (1997).

[39] *Id.* at 262; *see also* James Hartley, Designing Instructional Text (1994); and Barbara Chaparro *et al.*, Reading Online Text: A Comparison of Four White Space Layouts, 6(2) (2004).

[40] The ''x-height'' is the height of the lower-case ''x'' in relation to full height letters, such as a capital G. X-height is critical to type legibility.

[41] Erik Spiekermann & E.M. Ginger, Stop Stealing Sheep & Find Out How Type Works, 93 (1993).

[42] *See, e.g.*, Hewlett-Packard Corporation, Panose Classification Metrics Guide (2006), available at *http://www.monotypeimaging.com/productsservices/pan2.aspx.*

[43] *See* Schriver, *supra* note at 264; *see also* pp. 258–59.

[44] A number of these font styles, including Arial, Tahoma, Century Gothic, Garamond, and Bodoni, are preloaded on commonly used operating systems with most new personal computers. The other font styles are commercially available as well.

III. The Sample Clauses

The proposed model form is a standardized notice that would replace the Sample Clauses currently found in Appendix A of the privacy rule. It could be used by a financial institution at its option to comply with requirements for a clear and conspicuous privacy notice that meets the content requirements in sections __.6 and __.7 of the privacy rule.[45] Research to date indicates that the language in the Sample Clauses is confusing, and accordingly, the Agencies propose to eliminate the Sample Clauses from the privacy rule.

However, to ease the compliance burden for those institutions that currently have privacy notices based on the Sample Clauses, the Agencies are proposing a transition period of one year after which financial institutions would no longer obtain a safe harbor by using the sample clauses. Privacy notices using the Sample Clauses that are delivered to consumers (either in paper form or by electronic delivery such as email) or, alternatively, are posted electronically to meet the annual notice requirement of section __.9(c), would have a safe harbor for one year. Privacy notices using the Sample Clauses that are delivered or posted electronically after the one-year transition period would no longer obtain the safe harbor. Since institutions are required to send notices annually to their customers, annual notices that are delivered to consumers (either in paper form or by electronic delivery such as email) within the transition period would continue to get the safe harbor until the next annual privacy notice is due one year later.[46] The Sample Clauses would be rescinded one year after the transition period ends.

The Agencies note that the SEC's privacy rule does not provide a safe harbor for financial institutions that use the Sample Clauses. Rather, the Sample Clauses provide guidance concerning the SEC privacy rule's application in ordinary circumstances.[47] Consistent with this proposal, the SEC proposes that one year after the end of the transition period, the Sample Clauses would be rescinded and no longer provide guidance regarding the rule's application to financial institutions subject to the SEC's privacy rule.

IV. Proposed Effective Dates

The provisions of the final rule will be effective [DATE OF PUBLICATION OF THE FINAL RULE], with the following exceptions:

Sec. __.6, paragraph (g) will be effective [DATE OF PUBLICATION OF THE FINAL RULE] until [DATE 2 YEARS AFTER PUBLICATION OF THE FINAL RULE].

Newly redesignated Appendix B will be effective [DATE OF PUBLICATION OF THE FINAL RULE] until [DATE 2 YEARS AFTER PUBLICATION OF THE FINAL RULE].

V. Request for Comments

The Agencies seek comment on all aspects of the proposed model form. The Agencies also invite commenters to submit any additional consumer research that may inform the statutory requirements. *Commenters proposing alternative model notices or elements of a notice should submit any available supporting consumer research and documentation demonstrating that these alternatives meet the statutory requirements.* The Agencies expect to do additional testing before finalizing a model form. We solicit comment on particular approaches to consumer testing for the Agencies to consider.

The Agencies particularly seek comment on the following issues:

A. Content of the Model Form

1. Whether a commenter believes particular aspects of the form are not clear and conspicuous or comprehensible; and, if so, identify those aspects and explain in detail the basis for that conclusion.

2. Whether financial institutions can accurately disclose their information sharing practices by using the standardized provisions and vocabulary in the proposed model form, including whether the proposed disclosure table provides a financial institution with sufficient flexibility to disclose its sharing practices, or any additional opt-outs it offers, including a detailed explanation of why or why not.

3. The extent to which modifications to the opt-out form are necessary for a financial institution to describe its information practices accurately, facilitate consumer use of the opt-out form, or offer additional opt-outs, including an explanation of the modifications that could be made to page one and/or page three in accordance with legal requirements and the intent to keep the table on the first page of the form.

4. The extent to which financial institutions intend to incorporate the FCRA section 624 disclosure and opt-out for affiliate marketing in the model form, with an explanation of why or why not, and the time period they may offer to consumers for the opt-out period.

5. Whether financial institutions should be required to alert consumers to changes in an institution's privacy practices as part of the model form.

B. Format of the Model Form

1. Whether each page of the proposed model form should be required to be on a separate piece of paper or whether another format could also allow consumers to readily see all the information in the model form at the same time.

2. Whether the guidance on easily readable type font in the instructions is helpful and/or sufficient for institutions that use the proposed model form.

3. What size paper would be appropriate for the model form while conforming to the guidance for easily readable type font and layout.

4. Whether financial institutions want to use color and/or logos on the proposed model form, and the manner and extent to which they would use them without conflicting with readability of the form and space requirements.

C. Additional Information

1. The extent to which financial institutions subject to the GLB Act are likely to use the proposed model form, including a detailed explanation of why the commenter does or does not expect financial institutions to use the form.

2. Particular approaches to additional consumer testing of the model form that the Agencies should consider.

3. The proposal to replace the Sample Clauses with the proposed model form, including—(1) the transition period after which use of these clauses no longer qualifies for a safe harbor, or, for institutions subject to the SEC's privacy rule, guidance concerning the rule's application and (2) whether the Agencies should retain Sample Clauses A–1, A–3, and A–7, or develop model clauses to replace those sample clauses, for use as a safe harbor only by those institutions that provide the simplified notice described in section __.6(c)(5) (NCUA 716.6(e)(5)) of the privacy rule.

4. Whether the Agencies should develop a Web-based design for those

[45] The Agencies are also proposing conforming amendments to sections __.2, __.6, and __.7 of the privacy rule and to the Appendix.

[46] For example, if an institution provides a notice using the Sample Clauses on day 361 after the effective date of the rule, it would continue to have the safe harbor for one year until its next annual notice is due. If an institution provides a notice using the Sample Clauses on day 369 after the effective date of the rule, it would not obtain the safe harbor. Privacy notices using the Sample Clauses posted on an institution's Web site to meet the annual notice requirements of section __.9(c) would no longer get the safe harbor beginning one year after the final rule becomes effective.

[47] *See* SEC privacy rule, section 248.2(a). The facts and circumstances of each individual situation determine whether use of the Sample Clauses constitutes compliance with the SEC's privacy rule.

financial institutions that would like to use an electronic version of the proposed model form, and if so, whether institutions have suggestions for particular design and/or technical considerations.

5. Whether the Agencies should develop and make available on their Web sites a readily accessible and downloadable model form with ''fillable'' fields for institutions that wish to use the model form to create their own privacy notices; if so, whether institutions would use this downloadable model form; and whether it would be useful, particularly for smaller institutions that want to obtain the safe harbor.

6. Whether an SEC-regulated entity and an affiliated institution regulated by another Agency that intend to provide a joint privacy notice should be able to choose to rely on either the SEC model privacy form or the model privacy form proposed by the other Agency.[48]

7. The Agencies are aware that many institutions, but not all, currently request the customer to provide his or her account number or Social Security number (or other personal information, separately or in conjunction with such information) in order to opt out, whether by toll-free telephone, by electronic means such as e-mail, or by regular mail. Do institutions need that information in order to process opt-out requests, or would the customer's name and address alone, or the customer's name, address, and a truncated account number for a single account, be sufficient to process opt-out requests, including for customers with multiple accounts at the same institution? Should the Agencies consider omitting a line for such information on the opt-out page for the model privacy form in order to better protect customers and make it easier to opt out? Alternatively, should the opt-out page on the model form contain a line for a truncated account number or other identifying information?

The SEC specifically requests the following additional comment from its regulated entities:

1. Whether the standardized provisions and vocabulary in the proposed model form for SEC-regulated financial institutions are sufficient to allow these financial institutions accurately to disclose their information sharing practices, and specifically on the terms used in: (a) the description of the types of personal information that may be collected (in the key frame on page one), and (b) the examples of sources of information collection (in the FAQ on sharing practices on page two). The SEC requests that commenters who believe the proposed terms are not sufficient suggest alternative or additional terms that would be more accurate and explain why those terms would more accurately reflect typical information collection and sharing practices for brokers, dealers, investment advisers registered with the SEC, and investment companies.

2. Whether institutions should be able to omit certain terms that may not apply to their information collection practices or their sources of information.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. Because the use of the model form issued in this proposal is optional, the Agencies do not expect that the rule will have a significant economic impact on a substantial number of small entities. However, because the statute creates a new safe harbor for institutions by replacing the Sample Clauses in the current rule, with a model form, we have determined that it is appropriate to publish the following IRFA in order to inquire into the impact of the proposed rule on small entities.

A. Reasons for the Proposed Action

The Agencies are issuing this proposed rule for comment because the Regulatory Relief Act specifically requires them, no later than April 11, 2007, to publish for comment a model form that financial institutions may use as a safe harbor to satisfy their notice requirements under the Agencies' existing privacy rule.

B. Objectives of, and Legal Basis for, the Proposed Action

The goal of the proposed amendments is to satisfy the requirements of section 728 of the Regulatory Relief Act, which requires that the Agencies propose a model form that is comprehensible, clear and conspicuous, and succinct. The final model form that the Agencies adopt after reviewing comments would, if properly used, serve as a safe harbor for satisfying the privacy rule's requirements regarding content of privacy notices. The Act also requires that the proposed model form enable consumers easily to identify a financial institution's sharing practices and compare it with others.

As indicated in Section I of this release, the amendments to Appendix A of the Agencies' privacy rule are proposed pursuant to the authority set forth in § 503 (as amended by section 728 of the Regulatory Relief Act) and § 504 of the GLB Act.[49]

C. Small Entities Subject to the Proposed Rule Amendments

The proposed amendments to Appendix A and conforming amendments to sections __.2, __.6, and __.7 of the Agencies' privacy rules could potentially affect financial institutions, including financial institutions that are small businesses or small organizations, that choose to rely on the proposed model privacy form as a safe harbor.

1. *OCC.* The OCC estimates that 1,050 insured national banks, uninsured national banks and trust companies, and foreign branches and agencies are small entities for purpose of the Regulatory Flexibility Act.

2. *Board.* The Board estimates that 473 state member banks are small entities for purposes of the Regulatory Flexibility Act.

3. *FDIC.* The FDIC estimates that 3,302 state nonmember banks are small entities for purposes of the Regulatory Flexibility Act.

4. *OTS.* The OTS estimates that 429 small savings associations are small entities for purposes of the Regulatory Flexibility Act.

5. *NCUA.* The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $10 million in assets). The NCUA estimates that 3,805 credit unions are small entities for purposes of the Regulatory Flexibility Act.

6. *FTC.* Determining a precise estimate of the number of small entities that are financial institutions within the meaning of the proposed rule is not readily feasible. The GLB Act does not identify for purposes of the Commission's jurisdiction any specific

[48] As noted above, *see supra* notes 26, 33, the SEC model privacy form provides slightly modified terms on pages one and two of the model form, which include the range of information typically collected by brokers, dealers, investment advisers registered with the SEC, and investment companies.

[49] The SEC also is proposing the amendments under section 504 of the GLB Act [15 U.S.C. 6804], section 23 of the Securities Exchange Act of 1934 [15 U.S.C. 78w], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and section 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11].

The CFTC also is proposing the amendments under Section 504 of the GLB Act [15 U.S.C. 6804], and Sections 5g and 8a(5) of the Commodity Exchange Act [7 U.S.C. 7b–2, 12a(5)].

category of financial institution. In the absence of such information, there is no way to estimate precisely the number of affected entities that share nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers and therefore assume greater disclosure obligations.

7. *CFTC.* The CFTC is unable to determine a precise estimate of its registrants that are small entities, or that would be using the model form.

8. *SEC.* The SEC estimates that 911 broker-dealers, 210 investment companies registered with the Commission, and 710 investment advisers registered with the Commission are small entities for purposes of the Regulatory Flexibility Act.[50]

Because use of the model privacy form would be entirely voluntary, the Agencies have no way to estimate how many small financial institutions would use it.[51] The Agencies expect, however, that small financial institutions, particularly those that do not have permanent staff available to address compliance matters associated with the privacy rule, would be relatively more likely to rely on the model privacy form than larger institutions. We believe that most financial institutions currently have legal counsel review their privacy notices for compliance with the GLB Act, the FCRA, and the privacy rule. We believe that a financial institution that uses the model form for its privacy notice would need little, if any, review by legal counsel because the proposed regulation does not permit institutions to vary the form to obtain the benefit of a safe harbor, except as necessary to identify their sharing and opt-out policies.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule does not itself impose any additional recordkeeping, reporting, disclosure, or compliance requirements. Financial institutions, including small entities, have been required to provide notice to consumers about the institution's privacy policies and practices since July 1, 2001 (or March 31, 2002 in the case of the CFTC). The proposed amendments would not affect these requirements and financial institutions would be under no obligation to modify their current privacy notices as a result of the proposed amendments. Instead, the amendments propose a specific model privacy form that a financial institution may use to comply with notice requirements under the GLB Act, the FCRA (as amended by the FACT Act), and the privacy rule. Nonetheless, if the proposed amendments are adopted, some of the financial institutions that rely on the Sample Clauses in the current privacy rules' appendixes may wish to transition to the proposed model form and may incur some small, incremental costs in making this transition.[52] The Agencies expect, however, that the availability of a standardized model form would offset these costs because the form's standardized formatting and language would make it easier for institutions to prepare and revise their privacy policies.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe there are no federal rules that duplicate, overlap, or conflict with the proposed amendments. In fact, the Agencies have designed the model form so that a financial institution may use it to satisfy disclosure requirements for both the GLB Act and the FCRA (as amended by the FACT Act).

F. Significant Alternatives

The RFA directs the Agencies to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. *Different reporting or compliance standards.* As noted above, the Regulatory Relief Act requires the Agencies to publish ''a'' model form that, among other things, will facilitate comparison of the information sharing practices of different financial institutions. In light of these statutory requirements, the Agencies are proposing only one model form, which includes alternative language in some places that allows a financial institution to accurately describe its particular information sharing practices. The specific model form that the Agencies are proposing was developed as part of a careful and thorough consumer testing process designed to produce a clear, comprehensible, and comparable notice. The proposed model form emerged as the most effective of several notice formats considered as part of this testing. Although the Agencies know of no other model privacy notice that has been developed in this manner, we are specifically inviting comments about alternative model notices or elements of notices, along with supporting research and documentation. The Agencies will carefully consider any such submissions before adopting a final model form.

2. *Clarification, consolidation, or simplification of reporting and compliance requirements.* The Agencies believe that the proposed model form would simplify the reporting requirements for all entities, including small entities, that choose to use the model form. We anticipate that financial institutions that choose to use the proposed model form would spend less time preparing notices than if they had to draft one on their own. Because the model form was developed as part of a consumer testing process, it is difficult for the Agencies to further clarify, consolidate, or simplify the model notice without compromising the research findings.

3. *Performance rather than design standards.* Section 728 of the Regulatory Relief Act specifically requires that the Agencies propose a model form. The model form is an alternative means of providing a privacy notice that institutions may choose to use. The privacy rule does not mandate the format of privacy notices; thus neither the rule nor the proposed amendment would impose a design standard.

4. *Exempting small entities.* We believe that an exemption for small entities would not be appropriate or desirable. The Agencies note that the model form is available for use at the discretion of all financial institutions, including small institutions. Moreover, two key objectives of the proposed model form are that (1) consumers can understand an institution's information sharing practices and (2) they may more

[50] For purposes of the Regulatory Flexibility Act, under the Securities Exchange Act of 1934 a small entity is a broker or dealer that (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year, and (ii) is not affiliated with any person that is not a small entity and is not affiliated with any person that is not a small entity. 17 CFR 240.0–1. Under the Investment Company Act of 1940, a ''small entity'' is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10. Under the Investment Advisers Act of 1940, a small entity is an investment adviser that ''(i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year.'' 17 CFR 275.0–7.

[51] The Agencies have requested comment on the likelihood that financial institutions would use the model privacy form. *See supra* section V.

[52] We believe that institutions review their privacy policies annually, and the costs associated with this annual review, including professional costs, for compliance are likely to be the same as the costs to complete the proposed model form.

easily compare financial institutions' sharing practices and policies across privacy notices. An exemption for small entities would directly conflict with both of these key objectives, particularly enabling comparison across notices.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding: (i) The number of small entities that would be affected by the proposed amendments; (ii) the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; (iii) how to quantify the impact of the proposed amendments; and (iv) the consideration of alternatives. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. As noted above in Section V, the Agencies specifically request comment on whether a downloadable version of the proposed model form would be useful for financial institutions, and particularly small entities that would like to take advantage of the safe harbor. All comments on this IRFA will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted.

VII. Paperwork Reduction Act

The final rules governing the privacy of consumer financial information contain disclosures that are considered collections of information under the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*). Before the Agencies issued their privacy rules, they obtained approval from OMB for the collections. OMB control numbers for the collections appear below. These proposed rules do not introduce any new collections of information into the Agencies' privacy rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submissions to OMB are required.

OCC: Control number 1557–0216.

Board: Control number 7100–0294.

FDIC: Control number 3064–0136.

OTS: Control number 1550–0103.

NCUA: Control number 3133–0163 (NCUA in separate submissions to OMB is currently in the process of requesting reinstatement, with revisions due to the decrease in the number of respondent credit unions, to this number.)

FTC: Control number 3084–0121.

SEC: Control number 3235–0537.

CFTC: Control number 3038–0055.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS each has determined that its portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

OCC and OTS Executive Order 13132 Determination

The OCC and OTS each has determined that its portion of the proposed rulemaking does not have any federalism implications, as required by Executive Order 13132.

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 rule 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 this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

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. However, the Unfunded Mandates Act provisions do not apply to regulations that incorporate requirements specifically set forth in law. Because this notice of proposed rulemaking is issued pursuant to section 728 of the Regulatory Relief Act, the OTS and OCC are not required to conduct an Unfunded Mandates Analysis for this rulemaking. Nevertheless, the OCC and OTS each has 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.

SEC Cost Benefit Analysis

The SEC is sensitive to the costs and benefits imposed by its rules. As discussed above, the amendments the Agencies are proposing today would replace the sample clauses included in Regulation S–P's Appendix A (17 CFR part 248, appendix A) with a model privacy form that financial institutions could choose to provide to consumers. The proposed amendments are designed to implement section 728 of the Regulatory Relief Act. This Act directs the Agencies to ''jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under [section 503 of the GLB Act].'' Use of the model form would be voluntary so a financial institution could itself determine the benefits and costs in deciding whether using the model form would be suitable for its business and customers. Moreover, a financial institution that elected to use the model privacy form would benefit from the safe harbor it provides for disclosures required under the GLB Act. There would be no incremental costs of the information requirements for the proposed model privacy form because the disclosures are already required under Regulation S–P. However, financial institutions could incur some personnel costs in implementing the proposed model form. We expect these would be minimal because the language and format in the form are standardized and particularly if the form could be downloaded from a Web site.[53] Financial institutions can only customize very limited sections of the model privacy form. Insofar as the Sample Clauses in current Regulation S–P may have some value to some financial institutions, their phase-out under the proposed amendments to the rule could create some costs to those institutions. If financial institutions, including SEC-regulated institutions, make widespread use of the model privacy form, we anticipate that consumers will benefit from notices that are more comprehensible and easier to compare and use.

[53] We have asked for comment in section V on whether a downloadable version of the model form would be useful.

A. Benefits

We anticipate that brokers, dealers, investment advisers registered with the SEC, and investment companies would benefit from the proposed model privacy form's standardized formatting and language. The notice requirements of Regulation S–P have been effective since July 1, 2001, and would not be altered by the proposed amendments, but new brokers, dealers, investment companies, and registered investment advisers would be able to use the model privacy form without investing the time and resources previously necessary to develop their own notices. We believe that institutions currently review their Regulation S–P privacy policies annually. To the extent that these institutions are required to change their policies to reflect changes in their privacy practices, they may find it easier to use the proposed model privacy form as a revised or annual privacy notice rather than to revise their existing notices. In addition, the SEC expects that revisions to an institution's privacy policies would be easier to record in the model form's standardized format. The SEC also anticipates that a financial institution that chooses to use the model notice would need little, if any, ongoing review by legal counsel because an institution cannot vary the form except as necessary to identify certain specific sharing and opt-out policies.

Appendix A of Regulation S–P currently contains sample clauses that the SEC has said provide guidance in ordinary circumstances. The SEC has said, however, that the ''facts and circumstances of each individual situation'' will determine whether ''use of a sample clause'' constitutes compliance.[54] In contrast, if the proposed amendments are adopted, SEC-regulated institutions would benefit from the certainty that proper use of the model notice entitles them to a safe harbor for disclosures required under the GLB Act and FCRA.

Finally, as discussed more fully in section I.B above, the proposed model form was developed in an extensive consumer research testing process that evaluated consumers' ability to comprehend, use, and compare privacy notices. The SEC anticipates therefore that if financial institutions choose to use the proposed model form, consumers' comprehension and their ability to use and compare privacy policies would be enhanced. Institutions also might benefit from consumers' enhanced ability to understand and use the notices to the extent that consumers have more trust and confidence in an institution's privacy policies because the consumers understand those policies.

B. Costs

While the proposed amendments would not affect Regulation S–P's substantive requirements, and financial institutions would be under no obligation to modify their current privacy notices, we believe that financial institutions that elect to use the model privacy form could incur some small, incremental costs in making the transition from their current notices to the proposed model form. These costs could include staff time to review the model form and its instructions and complete the proposed form. As noted above, we anticipate there would be minimal computer costs associated with using the form, particularly if the form could be downloaded from a Web site. We also believe that a financial institution that would use the model privacy form would need little, if any, review by legal counsel because almost all the disclosures in the form are mandated. Institution-specific information consists of contact information, ''yes'' or ''no'' answers and brief descriptions, as necessary, of the types of entities with which they share information. Moreover, we believe that financial institutions currently review their privacy polices annually, and we anticipate that the costs associated with this annual review would likely be the same as the costs of completing the model form. Although there may be some costs to firms that currently rely on the sample clauses for guidance in preparing their privacy notices, we expect those costs to be minimal. As noted above, we believe that financial institutions take approximately the same time to prepare a notice using the proposed form as they currently take to review annual notices. Moreover, the Agencies are proposing to give financial institutions one year in which they can continue to rely on the Sample Clauses as guidance, which should allow time to minimize the costs of transition for institutions that would transition to the model privacy form. The SEC requests commenters to provide data on these and any other costs of transition or implementation, and to specify the type of financial institution (broker, dealer, investment adviser registered with the Commission, or investment company) that would incur the estimated costs.

As discussed above, we cannot estimate the number of institutions that would take advantage of the safe harbor. Accordingly, we cannot estimate the overall costs to broker-dealers, investment advisers registered with the Commission, and investment companies that may use the proposed model form.

C. Request for Comments

The SEC requests comment on the potential costs and benefits of the proposed amendments to Appendix A of Regulation S–P. The SEC specifically requests comment on the costs of each item discussed above that institutions could incur in using the model form and whether any of those costs would differ if the form were downloadable from a Web site. Commenters should specify the type of institution associated with estimates of cost and benefits. The SEC encourages commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[55] the SEC also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis.

SEC Consideration of Burden on Competition

Securities Exchange Act Section 23(a)(2) requires the SEC, in adopting rules under that Act, to consider the impact that any such rule would have on competition.[56] Section 23(a)(2) also prohibits the SEC from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act.

As discussed above, the proposed amendments to Regulation S–P, including the proposed model form, are designed to comply with section 728 of the Regulatory Relief Act, mandating that the Agencies propose a model form that is comprehensible, clear and conspicuous, and succinct. If adopted, SEC-regulated institutions would be able to use the model form in order to comply with the notice requirements under the GLB Act, the FCRA, and Regulation S–P.

The SEC does not expect the proposed amendments to have a significant impact on competition, and believes that any effect on competition would be favorable. Use of the proposed model form would be voluntary, permitting a financial institution to determine whether using the model form would enhance its competitive position. All brokers and dealers, investment companies, and registered investment advisers would be able to use the model form and take advantage of the safe

[54] *See* 17 CFR 248.2(a).

[55] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[56] *See* 15 U.S.C. 78w(a)(2).

harbor. Other financial institutions would be able to use the form and take advantage of the safe harbor under comparable rules proposed by the other Agencies. Under the Regulatory Relief Act, the Agencies have worked in consultation in order to ensure the consistency and comparability of the proposed amendments. Therefore, all financial institutions would have the same opportunity to use the model form and rely on the safe harbor.

Further, if financial institutions choose to use the proposed model form, the proposed amendments could promote competition by enabling consumers more easily to understand and compare competing institutions' privacy policies. The SEC also anticipates that the proposed model form's standardized formatting would reduce the relative burden of compliance on smaller financial institutions, allowing them to compete more effectively with larger institutions that are more likely to have a dedicated compliance staff. As such, the SEC expects any small impact on competition caused by the proposed amendments would be beneficial. We request comment on whether the proposal, if adopted, would have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

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).

CFTC Cost-Benefit Analysis

Section 15 of the Commodity Exchange Act requires the CFTC to consider the costs and benefits of its action before issuing a new regulation under the Act. The CFTC understands that, by its terms, section 15 does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed piecemeal or in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the CFTC could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The CFTC has considered the costs and benefits of the proposed model form as a totality. The form provides a voluntary alternative means of complying with existing requirements of the privacy provisions of the GLB Act and section 5g of the CEA, and thus imposes no mandatory new costs. The CFTC solicits comment on the transitional costs that may be incurred by institutions electing to use the model form, including costs in addition to those already imposed. The CFTC believes that the model form should benefit futures industry consumer customers in better understanding a financial institution's privacy policies, and may facilitate customers in comparing the privacy policies of financial institutions. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules with their comment letters.

List of Subjects

12 CFR Part 40

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 216

Banks, banking, Consumer protection, Foreign banking, Holding companies, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 332

Banks, banking, Consumer protection, Foreign banking, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 573

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 313

Consumer protection, Credit, Privacy, Reporting and recordkeeping requirements, Trade practices.

17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

17 CFR Part 248

Brokers, Consumer protection, Investment companies, Privacy, Reporting and recordkeeping requirements, Securities.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, part 40 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised as follows:

PART 40—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 40 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 6801 et seq.

2. Revise § 40.2 to read as follows:

§ 40.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 40.6 and 40.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

3. In § 40.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 40.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 40.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 40.7, add paragraph (i) to read as follows:

§ 40.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 40.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 40—Model Privacy Form

A. The Model Privacy Form

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call **[toll-free telephone]** or go to **[web address]**

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F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[affiliate information]***
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[nonaffiliate information]***
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ ***[joint marketing]***

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.** ☐ **Do not allow your affiliates to use my personal information to market to me.** *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ **Do not share my personal information with nonaffiliates to market their products and services to me.**

Your name:		**Mail to:**
Your address:		**[mailing address]**
Account number:		

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B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 40.6 and 40.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p.3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 40.14 and 40.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 40.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 40.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p.3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 40.7 and 40.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p.3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 40.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where *[affiliate information*] appears. A financial institution that shares with affiliates must use, as applicable, the following format: *''Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].''*

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 40.14 and 40.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where [*nonaffiliate information*] appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 40.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where *[joint marketing*] appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three *only* if they: (1) share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 40—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

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Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to amend part 216 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 216—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

1. The authority citation for part 216 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.*

2. Revise § 216.2 to read as follows:

§ 216.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 216.6 and 216.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

3. In § 216.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 216.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 216.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 216.7, add paragraph (i) to read as follows:

§ 216.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 216.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 216—Model Privacy Form

A. The Model Privacy Form

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call **[toll-free telephone]** or go to **[web address]**

FACTS

WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[affiliate information]***
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[nonaffiliate information]***
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ ***[joint marketing]***

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ☐ Do not allow your affiliates to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ Do not share my personal information with nonaffiliates to market their products and services to me.		
	Your name:		**Mail to:**
	Your address:		**[mailing address]**
	Account number:		

p. 3 of 3

B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 216.6 and 216.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p. 3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 216.14 and 216.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 216.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 216.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p. 3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 216.7 and 216.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p. 3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 216.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where *[affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: *''Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].''*

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 216.14 and 216.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 216.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where *[joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three *only* if they: (1) share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 216—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

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Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend part 332 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 332—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 332 continues to read as follows:

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 15 U.S.C. 6801 *et seq.*

2. Revise § 332.2 to read as follows:

§ 332.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 332.6 and 332.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

3. In § 332.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 332.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 332.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 332.7 add paragraph (i) to read as follows:

§ 332.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 332.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 332—Model Privacy Form

A. The Model Privacy Form

F A C T S

WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and income
- account balances and payment history
- credit history and credit scores

When you close your account, we continue to share information about you according to our policies.

How?

All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us

Call **[toll-free telephone]** or go to **[web address]**

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *[joint marketing]*

F A C T S **WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?**

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.** ☐ **Do not allow your affiliates to use my personal information to market to me.** *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ **Do not share my personal information with nonaffiliates to market their products and services to me.**

		Mail to:
		[mailing address]
Account number		

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B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 332.6 and 332.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p. 3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 332.14 and 332.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 332.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 332.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p. 3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 332.7 and 332.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p. 3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonaffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 332.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where *[affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: *''Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].''*

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 332.14 and 332.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 332.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where *[joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three only if they: (1) share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 332—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule. * * *

* * * * *

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend part 573 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 573—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 573 continues to read as follows:

Authority: 12 U.S.C. 1462a; 1463, 1464, 1828; 15 U.S.C. 6801 *et seq.*

2. Revise § 573.2 to read as follows:

§ 573.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 573.6 and 573.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

3. In § 573.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 573.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 573.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 573.7, add paragraph (i) to read as follows:

§ 573.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 573.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 573—Model Privacy Form

A. The Model Privacy Form

F A C T S	**WHAT DOES** [name of financial institution] **DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call **[toll-free telephone]** or go to **[web address]**

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *[joint marketing]*

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone] — our menu will prompt you through your choices** **On the web: [web address]** **By mail: mark your choices below, fill in and send form to:** **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.** ☐ **Do not allow your affiliates to use my personal information to market to me.** *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ **Do not share my personal information with nonaffiliates to market their products and services to me.**

		Mail to:
		[mailing address]

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B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 573.6 and 573.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p. 3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 573.14 and 573.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 573.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 573.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p. 3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 573.7 and 573.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p. 3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 573.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where *[affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: ''Our affiliates include companies with a *[name of financial institution] name; financial companies such as [list companies];* and nonfinancial companies, such as [list companies].''

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 573.14 and 573.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 573.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where *[joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three only if they: (1) share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out '' by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italic, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 573—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

* * *

* * * * *

National Credit Union Administration

12 CFR Chapter V

Authority and Issuance

For the reasons set forth in the joint preamble, the National Credit Union Administration proposes to amend part 716 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 716 continues to read as follows:

Authority: 12 U.S.C. 1751 *et seq.*; 15 U.S.C. 6801 *et seq.*

2. Revise § 716.2 to read as follows:

§ 716.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 716.6 and 716.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

3. In § 716.6, add paragraphs (f) and (g) to read as follows:

§ 716.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 716.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 716.7 add paragraph (i) to read as follows:

§ 716.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 716.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 716—Model Privacy Form

A. The Model Privacy Form

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call [toll-free telephone] or go to [web address]

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *[joint marketing]*

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing	
Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices			
Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ☐ Do not allow your affiliates to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ Do not share my personal information with nonaffiliates to market their products and services to me.		
			Mail to: **[mailing address]**

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B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 716.6 and 716.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p. 3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 716.14 and 716.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 716.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 716.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p. 3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 716.7 and 716.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p.3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonaffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 716.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where [*affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: *''Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].''*

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 716.14 and 716.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 716.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where [*joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three *only* if they: (1) Share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-

out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 716—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

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Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Trade Commission proposes to amend part 313 of chapter I of title 16 of the Code of Federal Regulations as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 313 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.*

2. Revise § 313.2 to read as follows:

§ 313.2 Model privacy form and rules of construction.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 313.6 and 313.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(c) *Compliance.* For non-federally insured credit unions, compliance with an example contained in 12 CFR part 716, to the extent applicable, constitutes compliance with this part. For intrastate securities broker-dealers and investment advisors not registered with the Securities and Exchange Commission, compliance with an example contained in 17 CFR part 248, to the extent applicable, constitutes compliance with this part.

3. In § 313.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 313.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 313.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 313.7 add paragraph (i) to read as follows:

§ 313.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 313.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 313—Model Privacy Form

A. The Model Privacy Form

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call [toll-free telephone] or go to [web address]

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *[joint marketing]*

F A C T S	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** ***(See page 1)*** ☐ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.** ☐ **Do not allow your affiliates to use my personal information to market to me.** ***(I will receive a renewal notice for this use for marketing in 5 years.)*** ☐ **Do not share my personal information with nonaffiliates to market their products and services to me.**	
		Mail to: **[mailing address]**

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B. General Instructions

1. How the model privacy form is used.

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 313.6 and 313.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p. 3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 313.14 and 313.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 313.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 313.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p. 3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 313.7 and 313.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p. 3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 313.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state ''*[name of financial institution] has no affiliates*'' in italicized lettering where [*affiliate information*] appears. A financial institution that shares with affiliates must use, as applicable, the following format: ''*Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].*''

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 313.14 and 313.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state ''*[name of financial institution] does not share with nonaffiliates so they can market to you.*'' in italicized lettering where [*nonaffiliate information*] appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: ''*Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].*''

(d) *Joint Marketing.* As required by section 313.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state ''*[name of financial institution] doesn't jointly market.*'' in italicized lettering where [*joint marketing*] appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: ''*Our joint marketing partners include [list categories of companies such as credit card companies].*''

4. Page Three

Opt-out form. Financial institutions must use page three only if they: (1) share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 313–Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

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Commodity Futures Trading Commission

17 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the Commodity Futures Trading Commission proposes to amend part 160 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C. 6801 *et seq.*

2. Revise § 160.2 to read as follows:

§ 160.2 Model privacy form and rules of construction.

(a) *Model privacy form.* Use of the model privacy form in Appendix A of this part, consistent with the instructions in Appendix A, constitutes compliance with the notice content requirements of §§ 160.6 and 160.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(c) *Substituted compliance.*

(1) Any person or entity otherwise subject to this part that is subject to and in compliance with the Securities and Exchange Commission Regulation S–P, 17 CFR part 248, will be deemed to be in compliance with this part.

(2) Any commodity trading advisor otherwise subject to this part that is registered or required to be registered as an investment adviser in the state in which it maintains its principal office and place of business as defined in § 275.203A–3 of this title, and that is subject to and in compliance with 16 CFR part 313, will be deemed to be in compliance with this part.

3. In § 160.6, revise paragraph (f) and add paragraph (g) to read as follows:

§ 160.6 Information to be included in privacy notices.

* * * * *

(f) *Model privacy form.* Pursuant to § 160.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. Use of a sample clause in a privacy notice provided on or before [DATE ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE], to the extent applicable, constitutes compliance with this part.

4. In § 160.7 add paragraph (i) to read as follows:

§ 160.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model privacy form.* Pursuant to § 160.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in Appendix A of this part.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 160—Model Privacy Form

A. The Model Privacy Form

F A C T S	**WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ credit history and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call [toll-free telephone] or go to [web address]

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?
Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ pay your bills or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *[joint marketing]*

FACTS	WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone] — our menu will prompt you through your choices** **On the web: [web address]** **By mail: mark your choices below, fill in and send form to:** **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ **Do not share information about my creditworthiness with your affiliates for their everyday business purposes.** ☐ **Do not allow your affiliates to use my personal information to market to me.** *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ **Do not share my personal information with nonaffiliates to market their products and services to me.**		
	[redacted]		**Mail to:**
	[redacted]		**[mailing address]**

p. 3 of 3

B. General Instructions

1. How the Model Privacy Form Is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 160.6 and 160.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The Contents of the Model Privacy Form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p.3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 160.14 and 160.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 160.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 160.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes '' information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A) (i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes '' information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the model form to satisfy their obligations under this part must include this reason for sharing as set forth in the model form in order to obtain the benefit of the safe harbor. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p.3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 160.7 and 160.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p.3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing). This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 160.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state ''*[name of financial institution] has no affiliates*'' in italicized lettering where *[affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: ''*Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].*''

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 160.14 and 160.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state ''*[name of financial institution] does not share with nonaffiliates so they can market to you.*'' in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: ''*Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].*''

(d) *Joint Marketing.* As required by section 160.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state ''*[name of financial institution] doesn't jointly market.*'' in italicized lettering where *[joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: ''*Our joint marketing partners include [list categories of companies such as credit card companies].*''

4. Page Three

Opt-out form. Financial institutions must use page three *only* if they: (1) Share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

7. Amend newly redesignated Appendix B by adding a new sentence immediately after the heading:

Appendix B to Part 160—Sample Clauses

This Appendix only applies to privacy notices provided until the date that is on or before one year following the date of final publication of this rule.

* * *

* * * * *

Securities and Exchange Commission

Statutory Authority

The Commission is proposing to amend Regulation S–P pursuant to authority set forth in section 728 of the Regulatory Relief Act [Pub. L. 109–351], section 504 of the GLB Act [15 U.S.C. 6804], section 23 of the Securities Exchange Act [15 U.S.C. 78w], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and section 211 of the Investment Advisers Act [15 U.S.C. 80b–11].

Text of Proposed Amendments

For the reasons set forth in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 248—REGULATION S–P: PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. Revise the authority citation for part 248 to read as follows:

Authority: 15 U.S.C. 78q; 78w; 78mm; 80a–30(a); 80a–37; 80b–4; 80b–11; 1681w; and 6801–6809.

2. Revise § 248.2 to read as follows:

§ 248.2 Model privacy form; rule of construction.

(a) *Model privacy form.* Use of Form S–P (see Appendix A of this part), consistent with the instructions to the form, constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part, although use of Form S–P is not required.

(b) *Examples.* The examples in this part provide guidance concerning the rule's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example, to the extent practicable, constitutes compliance with this part.

(c) *Substituted compliance with CFTC financial privacy rules by futures commission merchants and introducing brokers.* Except with respect to § 248.30(b), any futures commission merchant or introducing broker (as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, *et seq.*)) registered by notice with the Commission for the purpose of conducting business in security futures products pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)(A)) that is subject to and in compliance with the financial privacy rules of the Commodity Futures Trading Commission (17 CFR part 160) will be deemed to be in compliance with this part.

* * * * *

3. Amend § 248.6 by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 248.6 Information to be included in privacy notices.

* * * * *

(f) *Model Form S–P.* Pursuant to § 248.2(a) and Appendix A of this part, Form S–P meets the notice content requirements of this section.

(g) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix B of this part. The sample clauses in Appendix B of this part provide guidance concerning the rule's application in ordinary circumstances in a privacy notice provided on or before [ONE YEAR FOLLOWING THE DATE OF PUBLICATION OF THE FINAL RULE]. The facts and circumstances of each individual situation, however, will determine whether compliance with a sample clause constitutes compliance with this part.

4. Amend § 248.7 by adding paragraph (i) to read as follows:

§ 248.7 Form of opt-out notice to consumers; opt-out methods.

* * * * *

(i) *Model Form S–P.* Pursuant to § 248.2(a) and Appendix A of this part, Form S–P meets the notice content requirements of this section.

Appendix A [Redesignated as Appendix B]

5. Redesignate Appendix A to Part 248 as Appendix B.

6. Add new Appendix A to read as follows:

Appendix A to Part 248—Form S–P

(1) Any person may obtain a copy of Form S–P prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Any person also may view this form at: [Web site URL].

(2) Use of Form S–P by brokers, dealers, and investment companies, and investment

advisers registered with the Commission constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part.

7. Form S–P (referenced in Appendix A of this part) is added to read as follows:

Note: The text of Form S–P does not, and this amendment will not, appear in the Code of Federal Regulations.

Securities and Exchange Commission—Form S–P

A. Model Privacy Form

F A C T S	**WHAT DOES** [name of financial institution] **DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and transaction history ▪ assets, investment experience, credit history, and credit scores When you close your account, we continue to share information about you according to our policies.
How?	All financial companies need to share customers' personal information to run their everyday business—to process transactions, maintain customer accounts, and report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **[name of financial institution]** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— to process your transactions, maintain your account, and report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Contact Us	Call **[toll-free telephone]** or go to **[web address]**

FACTS

WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?

Sharing practices	
How often does [name of financial institution] notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a customer.
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ▪ open an account or deposit money ▪ buy or sell securities, pay your bills, or apply for a loan ▪ use your credit or debit card We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit sharing only for ▪ affiliates' everyday business purposes—information about your creditworthiness ▪ affiliates to market to you ▪ nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Everyday business purposes	The actions necessary by financial companies to run their business and manage customer accounts, such as ▪ processing transactions, mailing, and auditing services ▪ providing information to credit bureaus ▪ responding to court orders and legal investigations
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[affiliate information]***
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ ***[nonaffiliate information]***
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ ***[joint marketing]***

F A C T S	**WHAT DOES** [name of financial institution] **DO WITH YOUR PERSONAL INFORMATION?**

If you want to limit our sharing

Contact us	**By telephone: [toll-free telephone]** — our menu will prompt you through your choices **On the web: [web address]** **By mail:** mark your choices below, fill in and send form to: **[mailing address]** **Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.**

Check your choices

Your choices will apply to everyone on your account.	**Check any/all you want to limit:** *(See page 1)* ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ☐ Do not allow your affiliates to use my personal information to market to me. *(I will receive a renewal notice for this use for marketing in 5 years.)* ☐ Do not share my personal information with nonaffiliates to market their products and services to me.		
			Mail to: **[mailing address]**

p. 3 of 3

B. General Instructions

1. How the Model Privacy Form is Used

The model form may be used, at the option of a financial institution, including a group of financial holding company affiliates that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in sections 248.6 and 248.7 of this part.

(Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681—1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

2. The contents of the model privacy form

The model form consists of two or three pages, depending on whether a financial institution shares in a manner that requires it to provide a third page with opt-out information.

(a) *Page One.* The first page consists of the following components:

(1) The title.

(2) The key frame (Why?, What?, How?).

(3) The disclosure table (''Reasons we can share your personal information'').

(4) Contact information.

(b) *Page Two.* The second page consists of the following components:

(1) The title.

(2) The Frequently Asked Questions on sharing practices.

(3) The definitions.

(c) *Page Three.* The third page consists of a financial institution's opt-out form.

3. The Format of the Model Privacy Form

The model form is a standardized form, including page layout, page content, format, style, pagination, and shading. No other information may be included in the model form, and the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. Easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on one side of an 8.5 by 11 inch paper in portrait orientation.

(d) *Color.* The model form may be printed on white or light color paper (such as cream) with black or suitable contrasting color ink. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form.

C. Information Required in the Model Privacy Form

The model form is a standardized form, and institutions seeking to obtain the safe harbor through use of the model form may modify the form only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Include the name of the financial institution or group of affiliated institutions providing the notice on the form wherever [name of financial institution] appears. Contact information, such as the institution's toll-free telephone number, Web address, or mailing address, or other contact information, should be inserted as appropriate, wherever [toll-free telephone] or [web address] or [mailing address] appear.

2. Page One

(a) *General instructions for the disclosure table.* There are reasons for sharing or using personal information listed in the left column of the disclosure table. Each of these reasons correlates to certain legal provisions described below. In the middle column, each institution must provide a ''Yes'' or ''No'' response in each box that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. Each institution also must complete each box in the right column as to whether a consumer can limit such sharing. If an institution answers ''No'' to sharing for a particular reason in the middle column, it must answer ''We don't share'' in the corresponding right column. If an institution answers ''Yes'' to sharing for a particular reason in the middle column, it must, in the right column, answer either ''No'' if it does not offer an opt-out or ''Yes (Check your choices, p.3)'' if it does offer an opt-out. Except for the sixth row (''For our affiliates to market to you''), an institution must list all reasons for sharing, and complete the middle and right columns of the disclosure table.

(b) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* Because all financial institutions share information for everyday business purposes, as contemplated by sections 248.14 and 248.15 of this part, the financial institution must answer ''Yes'' to the sharing of such information and ''No'' to the availability of an opt-out.

(2) *For our marketing purposes.* The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction. This provision includes service providers contemplated by section 248.13 of this part.

(3) *For joint marketing with other financial companies.* As contemplated by section 248.13 of this part, the financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that shares for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This provision applies to sharing of certain information with an institution's affiliates, as contemplated by sections 603(d)(2)(A)(i) and (ii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason may or may not elect to provide an opt-out and must provide the corresponding answer in the right column as described in paragraph C.2.(a) of this Instruction.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This provision applies to the sharing of certain information with an institution's affiliates, as contemplated by section 603(d)(2)(A)(iii) of the FCRA. The financial institution must answer ''Yes'' or ''No'' in the middle column. An institution that does not share for this reason must answer ''We don't share'' in the right column. An institution that does not have any affiliates will also use this answer. Institutions that share for this reason must provide an opt-out and must provide the appropriate answer in the right column as described in paragraph C.2.(a) of this Instruction.

(6) *For our affiliates to market to you.* This provision applies to information shared among affiliates that is used by those affiliates for marketing, as contemplated by section 624 of the FCRA. Following the effective date of the rules implementing section 624, institutions that elect to incorporate this provision into the notice required under this part must include this reason for sharing as set forth in the model form. Institutions whose affiliates receive such information and use it for marketing must answer ''Yes'' in the middle column, and ''Yes (Check your choices, p.3)'' in the right column corresponding to the availability of an opt-out. Institutions whose affiliates receive such information and do not use it for marketing may elect to include this provision in the model form and answer ''No'' in the middle column and ''We don't share'' in the right column; however, institutions whose affiliates receive such information and do not use it for marketing are not required to use this provision. Institutions that do not have affiliates and elect to include this provision in their notice will answer ''No'' in the middle column and ''We don't share'' in the right column.

(7) *For nonaffiliates to market to you.* This provision applies to sharing under sections 248.7 and 248.10(a) of this part. Financial institutions that do not share for this reason must answer ''No'' in the middle column and ''We don't share'' in the right column. Financial institutions that do share for this reason must answer ''Yes'' in the middle column and ''Yes (check your choices, p. 3)'' corresponding to the availability of an opt-out.

(8) *Additional opt-outs.* A financial institution may customize the model form to offer opt-outs beyond those required under Federal law, so long as the additional information falls within the space constraints of the model form. If the institution chooses to offer its customers an opt-out for its own marketing or for joint marketing, for example, it can provide for that option by stating: ''Yes (Check your choices, p.3)'' as to the availability of the opt-out.

3. Page Two

(a) *General instructions for the Definitions.* The financial institution must customize the space below the last three definitions in this section (affiliates, nonafffiliates, and joint marketing).

This specific information must be in italicized lettering to set off the information from the standardized definitions.

(b) *Affiliates.* As required by section 248.6(a)(3) of this part, the financial institution must identify the categories of its affiliates or state *''[name of financial institution] has no affiliates''* in italicized lettering where *[affiliate information]* appears. A financial institution that shares with affiliates must use, as applicable, the following format: *''Our affiliates include companies with a [name of financial institution] name; financial companies such as [list companies]; and nonfinancial companies, such as [list companies].''*

(c) *Nonaffiliates.* If the financial institution shares with nonaffiliated third parties outside the exceptions in sections 248.14 and 248.15 of this part, the institution must identify the types of nonaffiliated third parties with which it shares or state *''[name of financial institution] does not share with nonaffiliates so they can market to you.''* in italicized lettering where *[nonaffiliate information]* appears. A financial institution that shares with nonaffiliated third parties as described here must use, as applicable, the following format: *''Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].''*

(d) *Joint Marketing.* As required by section 248.13 of this part, the financial institution must identify the types of financial institutions with which it engages in joint marketing or state *''[name of financial institution] doesn't jointly market.''* in italicized lettering where *[joint marketing]* appears. A financial institution that shares with joint marketing partners must use, as applicable, the following format: *''Our joint marketing partners include [list categories of companies such as credit card companies].''*

4. Page Three

Opt-out form. Financial institutions must use page three *only* if they: (1) Share or use information in a manner that triggers an opt-out; or (2) choose to provide an opt-out (as disclosed in the table on page 1) in addition to what is required by law. The model opt-out form must be provided on a separate page of the model form.

(a) *Contact us.* The section describes three common methods by which a consumer exercises an opt-out—by telephone, on the Web, and by mail. Financial institutions may customize this section to provide for the particular opt-out methods and options the institution provides. For example, if an institution offers opting out by telephone and the Web but not by mail, it would provide only telephone and Web information as shown in the model form in the ''Contact Us'' box. Only institutions that allow more than 30 days after providing the notice before sharing information may change the number of days in the lower right hand section of the box.

(b) *Check your choices.* Institutions must display the applicable opt-out options in the ''Check your choices'' box shown on this page. If an institution chooses not to offer an opt-out by mail, it must delete the boxes for name, address, account number, and mailing directions in the lower right-hand corner of the model form. Financial institutions that only offer one or two of the opt-out options listed on the model form must list only those options from the model form that apply to their practices and correspond accurately to the disclosures on page one. Thus, if an institution does not share in a manner that requires an opt-out for sharing with nonaffiliates, it must not include that opt-out option on page three of the model form. Institutions requiring information from consumers on the opt-out form other than an account number should modify that designation in the ''Check your choices'' box. Institutions that require customers with multiple accounts to identify each account to which the opt-out should apply should modify that portion of the model form.

(c) *Section 624 opt-out.* If the financial institution's affiliates use information for marketing pursuant to section 624 of the FCRA, and the institution elects to consolidate that opt-out notice in the model form, it must include that disclosure and opt-out election as shown in the model form. Institutions that elect to limit the time for the affiliate marketing opt-out, consistent with the requirements of section 624, must adhere to the requirements of that section and the Agencies' implementing rule with respect to any subsequent notice and opt-out. Institutions that elect to limit the opt-out period must include a statement in italics, as shown on the model form, that states the period of time for which the opt-out applies.

(d) *Additional opt-outs.* A financial institution that uses the disclosure table to indicate any opt-out choices available to consumers beyond those required by Federal law must include those opt-outs on page three of the model form. For example, if the financial institution discloses in the table that it offers an opt-out for joint marketing, the institution must revise the opt-out form on page three to reflect the availability of an opt-out, such as by adding a check-off box with the words ''Do not share my personal information with other financial institutions to jointly market to me.'' Likewise, if a financial institution chooses to offer its customers an opt-out for its marketing, it can provide for that option in the disclosure table and on the opt-out form by adding a check-off box with the words ''Do not share [or use] my personal information to market to me.''

8. Amend newly designated Appendix B by adding a new sentence immediately after the heading to read as follows:

Appendix B to Part 248—Sample Clauses

This appendix provides guidance only for privacy notices provided on or before [ONE YEAR AFTER THE PUBLICATION DATE OF THE FINAL RULE]. * * *

* * * * *

Dated: March 9, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 16, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of March, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 19, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board on March 15, 2007.

Mary Rupp,

Secretary of the Board.

The Federal Trade Commission.

Dated: March 20, 2007.

By direction of the Commission.

Donald S. Clark,

Secretary.

Dated: March 20, 2007.

Eileen A. Donovan,

Acting Secretary of the Commodity Futures Trading Commission.

By the Securities and Exchange Commission.

Dated: March 20, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 07–1476 Filed 3–28–07; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 7535–01–P, 6750–01–P, 6351–01–P, 8010–01–P

Federal Register

Thursday,
March 29, 2007

Part IV

Department of Housing and Urban Development

24 CFR Part 1000

Indian Housing Block Grant Program—Extension of Annual Performance Report Due Date; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5109–P–01]

RIN 2577–AC74

Indian Housing Block Grant Program—Extension of Annual Performance Report Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would extend the due date for Indian Housing Block Grant (IHBG) recipients to submit annual performance reports (APRs). Through the IHBG program, HUD provides housing assistance to Indian tribes and tribally designated housing entities (TDHEs). Currently, HUD's regulations require IHBG recipients to submit APRs 60 days after the end of the recipient's program year. HUD believes that extending this deadline by an additional 30 days will provide IHBG recipients with the necessary additional time to prepare and submit their APRs.

DATES: *Comment Due Date:* May 29, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically so that HUD, in turn, can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Bullough, Director of Grants Evaluation, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5156, Washington, DC 20410–5000; telephone (202) 402–4274 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

As authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), the IHBG program provides housing assistance under a single block grant to eligible Indian tribes or their TDHEs. IHBG funds are allocated under a needs-based formula. The regulations governing the IHBG program are found in part 1000 of HUD's regulations in Title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed those regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

On an annual basis, IHBG recipients are required to prepare and submit an APR that provides a self-assessment of their IHBG-funded activities. As described in further detail in § 1000.512, the APR includes a description of the use of grant funds, a comparison of accomplishments, an analysis and explanation of cost overruns or high unit costs, and any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in § 1000.524. Section 404(c) of NAHASDA requires HUD to establish due dates for the submission of these APRs. As established in § 1000.514, the APRs must be submitted to HUD within 60 days of the end of the IHBG recipient's program year. The regulations also authorize HUD to extend the APR due date if the recipient submits a justified request.

HUD's experience with the APR submission deadline has been that recipients do not have sufficient time to prepare APRs within 60 days of the end of their program year. In recent years, more than 40 percent of IHBG recipients have requested extensions. This rise in extension requests may be attributed to the increasing number of complex IHBG-funded activities such as housing development and leveraged financing.

II. This Proposed Rule

This proposed rule would extend the APR deadline by an additional 30 days. Under the revised § 1000.514, IHBG recipients would be required to submit their APRs within 90 days of the end of their program year. An additional, conforming change would be made in § 1000.524(d) to reflect the extended deadline. HUD believes that the extension will provide adequate time to IHBG recipients to obtain, review, and analyze accurate financial and programmatic data, and allow for community consideration, before submission of the completed APR to HUD. Further, the additional time will reduce the need for extensions and therefore alleviate the burden on Indian tribes, TDHEs, and HUD officials related to the preparation and processing of extension requests.

III. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the rulemaking process on matters that have tribal implications. Accordingly, HUD held nine consultation meetings, attended by more than 500 tribal representatives, between January 2005 through May 2005. During these meetings, attendees expressed support for extending the due date for the APR to 90 days after the end of the recipient's program year. Further, tribes have the opportunity to comment on this proposed rule, and HUD welcomes such comment.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0218. In accordance with 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 currently valid OMB control number.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, review, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is

categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) 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 proposed rule would extend the period of time, by 30 days, for IHBG funding recipients to submit their APRs. In the past, many IHBG recipients have reported that they need additional time to prepare their APRs and, as a result, request extensions to the current requirement. By extending the due date, IHBG recipients will have the additional time they need to prepare thorough APRs without the added burden of requesting additional time. The regulatory change is procedural and does not revise or establish new binding requirements on owners. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) 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 does not impose any federal mandate on state, local, or tribal governments or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled ''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 that Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments, nor does it preempt state law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 1000, as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

1. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

2. Revise § 1000.514 to read as follows:

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 90 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the report.

3. Revise § 1000.524(d) to read as follows:

§ 1000.524 What are HUD's performance measures for the review?

* * * * *

(d) Accurate annual performance reports were submitted to HUD in accordance with § 1000.514.

* * * * *

Dated: February 16, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–5738 Filed 3–28–07; 8:45 am]

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Federal Register

Thursday,
March 29, 2007

Part V

The President

Proclamation 8116—Education and Sharing Day, U.S.A., 2007

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Presidential Documents

Title 3—

The President

Proclamation 8116 of March 26, 2007

Education and Sharing Day, U.S.A., 2007

By the President of the United States of America

A Proclamation

A future of hope and opportunity in America requires that all our children develop the knowledge and character they need in life. On Education and Sharing Day, we recognize our responsibility to ensure that our young people have the foundation necessary to lead lives rich in purpose and fulfillment.

Education and Sharing Day honors the legacy of Rabbi Menachem Mendel Schneerson and emphasizes our commitment to teach the next generation of Americans the values that make our country strong. The Lubavitcher Rebbe believed that society should ''make a new commitment to kindness,'' and he helped to establish education and outreach centers offering social service programs and humanitarian aid around the world.

The character of our young people is strengthened by serving a cause greater than self and by the anchor of virtues, including courage and compassion. By instilling a spirit of service in our children, we create a more optimistic future for them and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 30, 2007, as Education and Sharing Day, U.S.A. I call upon government officials, educators, volunteers, and all the people of the United States to reach out to young people and work to create a better, brighter, and more hopeful future for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of March, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–1587
Filed 3–28–07; 8:53 am]
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LIST OF PUBLIC LAWS

This is a continuing list of publicnn bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 584 / P.L. 110–15

To designate the Federal building located at 400 Maryland Avenue Southwest in the District of Columbia as the "Lyndon Baines Johnson Department of Education Building". (Mar. 23, 2007; 121 Stat. 70; 1 page)

Last List March 23, 2007

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