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RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number AMS–FV–07–0009; FV05–373]

RIN 0581–AC53

Amendments to Regulations Under the Perishable Agricultural Commodities Act (PACA) To Ensure Trust Protection for Produce Sellers When Using Electronic Invoicing or Other Billing Methods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the regulations under the Perishable Agricultural Commodities Act (PACA) to ensure that the status of sellers of perishable agricultural commodities as trust creditors is protected when electronic data interchange (EDI) or other forms of electronic commerce are used to invoice buyers. Specifically, the amendments require that a buyer licensed under the PACA or its third party representative accept the PACA trust notice submitted to it by a seller on a paper, electronic invoice, or other billing statement. In addition, the buyer must allow sufficient data space for the required trust language regardless of the billing medium. Finally, any failure, act or omission inconsistent with this responsibility is unlawful and a violation of the PACA.

DATES: *Effective Date:* June 29, 2007.

FOR FURTHER INFORMATION CONTACT: Karla Whalen, Section Head, Trade Practices Section, or Phyllis Hall, Senior Marketing Specialist, Trade Practices Section, 202–720–6873.

SUPPLEMENTARY INFORMATION:

Background of PACA and Trust Provisions

USDA's Agricultural Marketing Service (AMS) administers and enforces the Perishable Agricultural Commodities Act (PACA). The PACA establishes a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. The law also provides a forum to adjudicate or mediate commercial disputes. Licensees who violate the PACA may have their license suspended or revoked, and principals of such a licensee are restricted from employment or operating in the produce industry for a period of time.

The PACA also imposes a statutory trust for the benefit of unpaid suppliers or sellers on perishable agricultural commodities received and accepted but not yet paid for, and may encumber products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products.

In the case of a business failure or bankruptcy of an entity subject to PACA, the debtor's inventory and receivables (PACA trust assets) are not property of the estate and are not available for general distribution until the claims of PACA creditors who have preserved their trust rights have been satisfied. Because of the statutory trust provision, PACA trust creditors who have preserved their trust rights with the appropriate written notices, including sellers outside of the United States, have a far greater chance of recovering the money owed to them should an entity subject to PACA go out of business. The PACA trust provisions protect producers and the majority of firms trading in fruits and vegetables as each buyer of perishable agricultural commodities in the marketing chain becomes a seller in its own turn.

In 1995, the PACA was amended to provide that licensed sellers of fresh and frozen fruits and vegetables may provide notice to buyers of their intention to preserve trust benefits by including specific language on invoice and billing documentation. The required language reads: ''The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.'' (7 U.S.C. 499e(c)(4)).

Amendment of PACA Regulations To Allow for Electronic Invoicing

The PACA regulations (7 CFR 46.46(a)(5)) were amended in 1997 to state that electronic communications are considered ''ordinary or usual billing and invoice statements'' within the meaning of Section 5(c)(4) of the PACA. Under the 1997 amendments to the PACA regulations, unpaid PACA licensed sellers or suppliers of fresh and frozen fruits and vegetables have the option of providing notice to buyers of their intention to preserve their trust rights by including the specified language contained in Section 5(c)(4) of the PACA on their billing or invoice statements, whether those statements are paper documentation or electronic transmissions. Alternatively, as provided in the PACA and regulations, sellers (licensed or non-licensed) can also satisfy the notice requirement by sending the buyer a separate detailed notice of their intent to preserve trust benefits within thirty (30) days of payment default. Whichever method of providing notice is used to preserve trust benefits, in order to claim the benefit of the trust, payment terms may not exceed 30 days from date of acceptance.

Since the amendment to the regulations, a number of produce sellers voiced concern that their PACA trust rights might not be preserved if: (1) The buyer/buyer's agent either willfully or through oversight did not receive the entire electronic transmission (i.e., electronic invoice); (2) the buyer/buyer's agent did not download the trust information; (3) the buyer/buyer's agent did not opt to receive the information; (4) the buyer/buyer's agent did not buy the data field that allows the inclusion of the trust language; or (5) the EDI service provider did not translate the field that contains the trust language. Additional concerns were expressed

that the alternate method of trust notice (i.e., separate trust notice letter) was not being accepted by some buyers who require electronic invoicing. Others in the industry expressed concern about being charged a fee by the buyer to accept the notice to preserve their trust benefits with an electronic invoice, a paper invoice, or separate trust notice.

Advanced Notice of Proposed Rulemaking

AMS published an Advanced Notice of Proposed Rulemaking in the **Federal Register** on January 30, 2006, (71 FR 4831) seeking comments on whether, and if so, how to amend the PACA regulations to address industry concerns regarding electronic invoicing. The Advance Notice of Proposed Rulemaking invited comments on: (1) The types of problems that may need to be addressed by new regulatory language; (2) any technological barriers and solutions; (3) any additional costs likely to be associated with appropriate regulations, and opinions regarding who should bear such costs; (4) whether the Agency should by regulation define electronic invoicing methods that must be made available by licensed buyers, (e.g., creating a separate field for trust notice language in electronic invoices); (5) whether buyers should be required to accept separate notices (i.e., electronic or paper PACA trust) without restriction or charge; and (6) other related issues and suggestions. The comment period ended on March 16, 2006. AMS received 65 comments. The vast majority of the comments favored amending the regulations to clarify electronic invoicing practices so that sellers have the same protection when using electronic invoicing as that afforded through traditional paper invoices. Therefore, AMS determined it was appropriate to issue a notice of proposed rulemaking.

Notice of Proposed Rulemaking

AMS published a Notice of Proposed Rulemaking in the **Federal Register** on November 8, 2006, (71 FR 65426) seeking comments on amending the PACA regulations to ensure that the status of sellers of perishable agricultural commodities as trust creditors is protected when electronic data interchange (EDI) or other forms of electronic commerce are used to invoice buyers. Specifically, the amendments would require that a buyer licensed under the PACA or its third party representative accept the PACA trust notice submitted to it by a seller on a paper, electronic invoice, or other billing statement. In addition, the buyer would be required to allow sufficient data space for the required trust language regardless of the billing medium. Finally, any failure, act or omission inconsistent with this responsibility would be unlawful and a violation of the PACA.

The comment period ended on January 8, 2007. We received 41 comments. All commentors supported AMS's proposal to amend the regulations. The comments indicate that the proposed amendments would remedy a very serious potential commercial problem for shippers/sellers, as well as adapt to industry practices of enhanced technology; and, thus would provide the same protections for the shippers/sellers when paper invoices or EDI transmissions are used. Therefore, for the reasons given in the proposed rule and based upon comments received, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 12988

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. There are approximately 15,000 firms licensed under the PACA, many of which could be classified as small entities.

The final rule clarifies how to preserve the trust benefit when using electronic invoicing. The use of electronic invoicing will provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights, thereby reducing the time and expense associated with preserving trust rights under the PACA.

Given the preceding discussion, AMS has made a determination that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this final rule were approved under OMB number 0581–0031 on October 5, 2004, and expire on October 31, 2007.

E-Government Act Compliance

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.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Investigations, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, AMS amends 7 CFR part 46 as follows:

PART 46—[AMENDED]

■ 1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

■ 2. In § 46.46, paragraph (f)(3) introductory text is revised and new paragraphs (f)(4) and (5) are added to read as follows:

§ 46.46 Statutory trust.

* * * * *

(f) * * *

(3) Licensees may choose an alternate method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement as defined in paragraph (a)(5) of this section, whether in documentary or electronic form, to preserve trust benefits. Alternately, the licensee's invoice or other billing statement, given to the buyer, must contain:

(i) * * *

(ii) * * *

(4) If the invoice or other billing statement is in electronic form, the licensee has met its requirement of giving the buyer notice of intent to preserve trust benefits on the face of the

invoice or other billing statement if the electronic invoice or other billing statement containing the statement set forth in paragraph (f)(3)(i) is sent to the buyer and the electronic transmission can be verified. The licensee will be deemed to have given notice to the buyer of its intent to preserve trust benefits if the licensee can verify that the electronic invoice or other billing statement was sent to a third party electronic transaction vendor designated by the buyer. The licensee will have met the requirement of giving the buyer written notice of intent to preserve trust benefits using electronic means if it can verify that the electronic data invoice or other billing statement was transmitted to the buyer, or its designated electronic transaction vendor, irrespective of whether or not the buyer or third party vendor downloads or accepts the trust statement.

(5) If a buyer conducts its transactions in perishable agricultural commodities using an electronic system, the buyer or its third party electronic vendor must allow sufficient space for the seller to include the required trust statement of intent to preserve trust benefits in the buyer's electronic invoices or other billing statement forms. A buyer or its designated third party electronic vendor must accept a seller's notice of intent to preserve benefits under the trust using the required trust statement, whether in documentary or electronic form, as set forth in paragraphs (d) and (f) of this section. Any act or omission which is inconsistent with this responsibility is unlawful and in violation of Section 2 of the Act (7 U.S.C. 499b).

Dated: May 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–10262 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. AMS–FV–07–0028; FV07–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements established under the California desert grape marketing order, which regulates the handling of grapes grown in a designated area of Southeastern California. The marketing order is administered locally by the California Desert Grape Administrative Committee (CDGAC or committee). This rule requires handlers to provide an annual report to the committee which lists the acreages devoted to grapes for fresh shipment, the owners and locations of the acreages, and varieties produced thereon that the handler will be handling during the upcoming season. This change allows the committee to collect information on the acreage and varieties of desert grapes regulated under the marketing order, thus improving data collection and the efficient operation of the program.

EFFECTIVE DATES: May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, 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: *Terry.Vawter@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 final rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, 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. This rule is not intended to have retroactive effect. This final 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 final rule changes the reporting requirements under the order by requiring handlers to file an annual acreage survey which lists the acreages devoted to grapes, the locations and owners of the acreage, and varieties produced thereon for fresh shipment that the handler will be handling during the upcoming season. The form provides information necessary for the committee to estimate annual production, determine the necessary assessment rate, and establish an annual budget of expenses. This change was unanimously recommended by the committee at a meeting on February 6, 2007.

Section 925.60 provides authority for the committee, with the approval of USDA, to require handlers to furnish information to the committee. Currently, § 925.60(a) requires handlers to file reports of shipments of grapes. Under § 925.60(b), the committee is authorized, with the approval of USDA, to require handlers to furnish such other information as it may prescribe and may be necessary to enable the committee to perform its duties under the order.

The acreage survey is currently an approved form authorized for use by the committee. The form was initially included so that the committee could, at some future time, recommend requiring handlers to use the form if it were determined that aggregating information on grape acreage would provide a benefit to the industry.

The committee met on February 6, 2007, and discussed the grape acreage survey. At this time, the committee believes the report would provide valuable information and unanimously recommended that it be a mandatory report, such as those authorized under § 925.60. This change is intended to enhance the efficient operation of the program by permitting the committee to collect production data, which, in turn, would allow them to have more accurate information for establishing a crop estimate, determining an

assessment rate, and developing an annual budget of expenses.

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 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000 and defines small agricultural service firms as those whose annual receipts are less than $6,500,000.

Last year, six of the 20 handlers subject to regulation had annual grape sales of at least $6,500,000. In addition, 10 of the 50 producers had annual sales of at least $750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This final rule revises § 925.160 of the order's rules and regulations to include the requirement that handlers file an annual grape acreage survey.

This final rule imposes minimal additional costs on handlers regulated under the order. The benefits of this proposed rule are not expected to be disproportionately greater or less for small handlers than for large entities.

At the meeting, the committee discussed an alternative to this change, which would be to ask handlers to voluntarily report grape acreage. However, under voluntary reporting it is possible that all handlers would not report the information, making it difficult for the committee to aggregate accurate information for the committee's crop estimate, assessment rate, and budget of expenses. The committee agreed that this alternative would not be in the best interest of the committee and the industry, and unanimously recommended mandating the report.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581–0189, Generic OMB Fruit Crops.

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

Further, the committee's meeting on February 6, 2007, was widely publicized throughout the desert grape industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations. Like all committee meetings, the February 6, 2007, meeting was a public meeting; and all entities, both large and small, were encouraged to express their views on this issue. All interested persons were invited to attend this meeting and encouraged to participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on April 16, 2007 (72 FR 18922). Copies of the rule were provided to all committee members and regulated handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending May 1, 2007, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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 matters 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the order regulations went into effect on April 20, 2007, and the committee needs to have the information during this crop year. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 925.160, the current paragraph is redesignated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 925.160 Reports.

(a) * * *

(b) When requested by the California Desert Grape Administrative Committee (CDGAC), each shipper who ships grapes shall furnish to the committee at such time as the committee shall require, an annual grape acreage survey (CDGAC Form 7), which shall include, but is not limited to, the following: The applicable year in which the report is requested; the names of the shipper (handler) who will handle the grapes and the grower who produces them; the location of each vineyard; the variety or varieties grown in each vineyard; and the bearing, non-bearing, and total acres of each vineyard.

Dated: May 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–10280 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA19

Rural Economic Development Loan and Grant Programs

AGENCIES: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This action modifies the regulations for the Rural Economic Development Loan and Grant Programs. This revised regulation is written in a format that is simpler in design and should improve ease of use by the public and program beneficiaries.

EFFECTIVE DATE: June 29, 2007.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, Director, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the programs impacted by this action is 10.854, Rural Economic Development Loans and Grants.

Intergovernmental Review

Rural Economic Development Loans and Grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities,'' and in 7 CFR part 3015, subpart V.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4374, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the Agency has determined that this action would not have a significant economic impact on a substantial number of small entities. This regulation only impacts those who choose to participate in the loan or grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0570–0035, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The revisions in this rulemaking, for 7 CFR part 4280, required an amendment to the burden package and this modification has been approved by OMB.

E-Government Act Compliance

The Rural Business-Cooperative Service 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.

Background

The proposed rule for the Rural Economic Development Loan and Grant (REDLG) programs was published on December 15, 1999, in the **Federal Register**, in Vol. 64, No. 240, pages 69937–69946, as 7 CFR part 4280. The proposed rule was originally structured in a format consisting of questions and answers. To provide for an easier understanding of these programs, inasmuch as it includes the participation of three distinct parties (the Federal Government, the intermediary, and the third-party ultimate recipient), this final rule has been restructured in the standardized format utilized by the Agency in its other regulations. Consequently, several section numbers and headings of the final rule have been modified due to the change in format.

The existing regulations for the REDLG programs are found at 7 CFR part 1703, subpart B, and will be

removed from Part 1703 upon publication of this final rule.

The REDLG programs were originally implemented in 1989 as part of the rural economic development program of the Rural Electrification Administration, predecessor to the Rural Utilities Service (RUS). As a result of the United States Department of Agriculture reorganization, responsibility for these programs was transferred to Business Programs under the Rural Business-Cooperative Service (RBS), which provides financing for rural areas. These programs are administered at the State level through the Department of Agriculture's Rural Development State Offices.

Since its inception in 1989, these programs have had a substantial impact on economic development in rural areas. As of September 30, 2005, the REDLG programs have provided $217.5 million in loans and $92.7 million in grants, leveraged over $2.5 billion, and directly created an estimated 35,000 new jobs for rural areas.

Under these programs, loans or grants are provided to eligible electric and telecommunications utilities. The purpose of the programs is to encourage these utilities to promote rural economic development and job creation projects. The utility, previously referred to as the ''RUS Borrower'' now referred to as the ''intermediary'' can receive loans to help finance projects such as business start-up costs, business expansion, community development, and business incubator projects. The intermediary must use program loan funds to make a pass-through loan to an ultimate recipient such as a business. The intermediary is responsible for fully repaying its loan to the Government even if the ultimate recipient does not repay its loan.

The intermediary must use program grant funds, along with its required contribution, to create a revolving loan fund that the intermediary utility will operate and administer. Loans to the ultimate recipient are made from the revolving loan fund for a variety of projects.

Comments and Responses on the Proposed Rule

A total of 22 organizations responded within the official 30-day comment period. In addition to the comments solicited from the general public through the rulemaking process, RBS held a public meeting on August 2, 2000, to hear oral presentations on the proposed rule. Four public organizations made presentations. All comments, both written and oral, were considered and some revisions in the final rule are in response to those comments. Some of these revisions include clarifications to better explain the programs. The majority of the comments centered on the selection factors established in § 4280.42(b) for Agency use in evaluating and scoring the applications. Other comments pertained to the elimination of a previously eligible purpose and to supplemental funds use. The comments have been grouped into 8 categories and are discussed below based on the applicable section number of the final rule.

Comment. Some comments indicated that intermediaries do not want their supplemental contribution applied to the same project as funded by the Agency grant, but wanted their contribution available to lend to a separate project.

Response. The Agency is aware that intermediaries have experienced difficulty in full utilization of supplemental funds. RBS has considered these comments and has amended the final rule to give the intermediary the option to use its supplemental contribution for the same project the Agency is financing or to fund another eligible project. If the intermediary chooses to finance a separate eligible project, the matching funds must be used within 3 years from the date of the grant agreement or the grant will be terminated. Subsequent use of revolved funds will be managed in accordance with the Agency—approved revolving loan fund plan and the interest rates on those loans will be at the discretion of the intermediary as shown in the plan, but not to exceed the prevailing prime rate.

Comment. Some comments opposed the proposed exclusion of agricultural production as an eligible purpose. The commenting entities believe that agriculture is a vital business component of their state economy and providing for both value-added agriculture and priority markets for farmers is very important.

Response. Historically, funding under the REDLG program has not been heavily applied for or utilized by agricultural production projects. The Agency has decided to allow agricultural production as an eligible purpose only where the project benefits farmer-owned cooperatives or a similar farmer-owned organization through which benefits are passed directly to the farmer members.

Comment. Some comments stated that applications for advanced telecommunications or computer networks to facilitate medical, educational, or job training projects should not be eligible for priority points under two separate sections of the regulation, that is, § 4280.42(b)(1)(iii) and 4280.43(d). The comments stated that this type of project should be a priority of the programs since one of the ways rural America can be more competitive is to have advanced telecommunications systems for health care, job training, and business use. They believe, however, that there are other infrastructure and business assistance needs that must also be met.

Response. RBS agrees that advanced telecommunications and computer network projects should be a priority. To address this, RBS had initially added five points to those projects in addition to those added under § 4280.42(b)(1)(iii). RBS now agrees that there are other program priorities that must be met and Advanced Telecommunications and computer network projects should not receive two sets of priority points. Accordingly, § 4280.43(d) will be removed.

Comment. Some comments stated that using a selection factor that measures job creation per $100,000 of project costs is too limiting. Another comment supported the existing regulation that awards points for job creation under a subjective factor.

Response. RBS disagrees that a measure of jobs per $100,000 is too limiting. We agree that a broader approach to job creation is helpful. Therefore, we have maintained the selection factor of jobs per $100,000, but have expanded the definitions to include ''direct'', ''indirect'', ''full-time'', ''part-time'', and ''seasonal'' jobs as well as a formula for determining full-time job equivalents. These definitions clarify formulaic requirements for correct calculation of program job creation statistics in accordance with Agency requirements. To calculate full-time equivalent jobs, two part-time jobs are counted as one full-time job or three seasonal jobs as one full-time job. If the total number of part-time and seasonal jobs adds up to a fraction, round up to the next whole number after combining same.

Comment. Some comments supported the proposed elimination of the rural restrictions pointing out the positive regional aspects that projects in larger communities have over the rural economy. Other comments urged the Agency to retain these restrictions, pointing out that the Agency should give priority to very rural locations.

Response. The Agency has revised its definition of rural to allow projects to be funded in areas with a population of 50,000 or less which is the statutory limit. However, the Agency will retain

its historical practice to allow priority points to projects in rural areas with a population of less than 2,500.

Comment. The majority of comments opposed awarding points based on the award being an initial one for the intermediary or the county rather than focusing funding on the best possible projects.

Response. RBS has taken into consideration the fact that the majority of intermediaries that are active participants in the REDLG project are concentrated in a few states and these intermediaries have received the highest number of REDLG awards. The intermediaries in these states have access to affiliated economic development organizations that assist the intermediaries in seeking prospective business clients, providing technical assistance in promoting rural development, and in packaging applications. Not all intermediaries throughout the country have such technical expertise available. This discourages their participation in the REDLG program. To ensure that the greatest number of intermediaries has access to the benefits of the program, RBS will award priority points if the application is a first-time award for a new intermediary or if it is an award to an existing intermediary that will fund a project in a county not previously served.

Comment. Some comments stated that the requirement for a financial plan that covers the term of the loan was excessive.

Response. RBS has changed this section to require a 3-year financial plan from the ultimate recipient.

Comment. One comment stated that the selection of awards should be based on points, regardless of the number of previous awards given to the intermediary in a fiscal year.

Response. To ensure that the greatest numbers of intermediaries have access to the benefits of the programs, the Agency will retain the proposed provision that the Agency may limit an intermediary to one selected grant application and two selected loan applications in a fiscal year, depending upon availability of funds.

Other Clarifications to Final Rule

Section 4280.2: the reference to ''loan'' was changed to ''REDG Zero-Interest Loan'' and ''REDL Zero-Interest Loan'' to better reflect that REDLG encompasses two separate and distinct programs; the definition for ''project'' was revised to add ''ultimate recipient activity'' for clarification purposes; the nomenclature ''RUS Borrower'' was eliminated replaced with ''intermediary.'' A definition was provided for ''intermediary'' to meet the requirements of the programs. The definition indicates that RUS remains the final determinant of an intermediary's eligibility for participation in the programs; a definition of ''rural area'' was added; and the definition for an ''ultimate recipient'' was revised to list all eligible entities.

Sections 4280.3 and 4280.15(a), are revised to clarify the definition of ''start-up venture costs.''

Section 4280.15(g), clarifies that zero-interest loans are allowable for REDG projects in accordance with § 4280.21.

Section 4280.17, clarifies that payments on zero-interest loans are due in monthly installments; and provides guidance regarding disposition of partial loan payments made by ultimate recipients.

Sections 4280.19 and 4280.50, state that administration and termination of grants will be subject, where applicable, to 7 CFR parts 3015 and 3019.

Section 4280.21, a reference to Federally-recognized Indian tribes was inserted to clarify the definition of eligible ultimate recipients in connection with § 4280.3.

Section 4280.23:, clarifies the intended use of the Intermediary's contribution to the revolving loan fund and the reasons that will result in termination of the fund.

Provisions previously stated under Section 4280.24 have been combined with Section 4280.23 to maintain consistency in subject matter. The nomenclature ''Non-Federal Funds'' has been changed to ''Revolved Funds'' for clarification of the true nature of the funding. Section 4280.24 now clarifies ''Revolved Funds.''

Section 4280.27, clarifies that program funds cannot be used to refinance existing indebtedness of the ultimate recipient project; and cites those instances where program funds may be eligible for agricultural production purposes.

Section 4280.29, reflects that either the intermediary or the ultimate recipient may provide the 20 percent supplemental financing required for the Ultimate Recipient Project.

Section 4280.36: clarifies Equal Employment Opportunity, nondiscrimination and civil rights requirements; clarifies that loans made from the revolving loan fund, when funds are derived from repayments or interest earnings, and not directly from the Government, are not subject to the Agency's environmental clearance process; clarifies the need to comply with flood hazard insurance requirements; and provides audit requirements for assistance under this program.

Section 4280.42(b)(5), the economic factor used has been changed to per capita personal income rather than median household income. Per capita personal income is a more appropriate indicator of current wages and economic wealth of the county where the project is located and has historically been used in the REDLG programs.

List of Subjects

7 CFR Part 1703

Community development, Grant programs—housing and community development, loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Business and industry, Community development, Economic development, Grant programs—housing and community development, loan programs—housing and community programs, Reporting and recordkeeping requirements, Rural areas.

■ Therefore, chapters XVII and XLII, title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901, *et seq.* and 950aaa, *et seq.*

Subpart B—[Removed]

■ 2. Subpart B of part 1703 is removed and reserved.

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4280—LOANS AND GRANTS

■ 3. Subpart A (§§ 4280.1 through 4280.100), is added to part 4280 to read as follows:

Subpart A—Rural Economic Development Loan and Grant Programs

Sec.

4280.1 Purpose.
4280.2 Policy.
4280.3 Definitions.
4280.4–4280.12 [Reserved]
4280.13 Applicant eligibility.

4280.14 [Reserved]
4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.
4280.16 REDL and REDG Loan terms.
4280.17 Additional REDL terms.
4280.18 [Reserved]
4280.19 REDG Grants.
4280.20 [Reserved]
4280.21. Eligible REDG initial Ultimate Recipients and Projects.
4280.22 [Reserved]
4280.23 Requirements for lending from Revolving Loan Fund.
4280.24 Revolved funds.
4280.25 Revolving Loan Fund Plan.
4280.26 Administration and operation of the Revolving Loan Fund.
4280.27 Ineligible purposes.
4280.28 [Reserved]
4280.29 Supplemental financing required for the Ultimate Recipient Project.
4280.30 Restrictions on the use of REDL or REDG funds.
4280.31–4280.35 [Reserved]
4280.36 Other laws that contain compliance requirements for these Programs.
4280.37 Application forms and filing dates.
4280.38 Maximum amount of loans and Grants.
4280.39 Contents of an application.
4280.40 [Reserved]
4280.41 Environmental review of the application.
4280.42 Application evaluation and selection.
4280.43 Discretionary points.
4280.44 Limitation on the number of loans or Grants to an Intermediary.
4280.45–4280.46 [Reserved]
4280.47 Non-selection of applications.
4280.48 Post-selection period.
4280.49 [Reserved]
4280.50 Disbursement of Zero-Interest Loan funds.
4280.51–4280.52 [Reserved]
4280.53 Loan payments.
4280.54 Construction procurement requirements.
4280.55 Monitoring responsibilities.
4280.56 Submission of reports and audits.
4280.57–4280.61 [Reserved]
4280.62 Appeals.
4280.63 Exception authority.
4280.64–4280.99 [Reserved]
4280.100 OMB control number.

Authority: 5 U.S.C. 301: 7 U.S.C. 940c.

Subpart A—Rural Economic Development Loan and Grant Programs

§ 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

§ 4280.2 Policy.

(a) *REDL Program.* REDL Zero-Interest Loans are made to Intermediaries, to relend, at a zero-interest rate, to Ultimate Recipients. Ultimate Recipients are responsible for repayment to the Intermediary. The Intermediary must transmit Ultimate Recipient loan repayments to Rural Development.

(b) *REDG Program.* Grants are made to Intermediaries to establish Revolving Loan Funds. REDG Zero-Interest Loans are made by the Intermediary from the Revolving Loan Fund to Ultimate Recipients for the purpose of financing specific, approved Projects. Ultimate Recipients are responsible for repayment to the Intermediary. The Ultimate Recipient's loan repayments are to be retained in the Revolving Loan Fund, which is maintained by the Intermediary, to finance other rural economic development Projects. Only the initial loan made by the Intermediary from the Revolving Loan Fund has to be at zero interest.

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced Telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

Agricultural Production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, fish, or birds, either for fiber, food for human consumption, or livestock feed.

Business Incubator. A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

Community Facilities Project. An eligible community facility under the Community Facility Direct or Guaranteed programs.

Cushion of Credit. The amount contributed by the Intermediary pursuant to 7 U.S.C. 940c.

Direct Job. A job that is created or saved by an Ultimate Recipient employer as a result of funding received from these Programs.

Established Operation. An entity that has engaged in the nature of the Project for more than one year.

Full-Time Job. A job for which a worker is scheduled to work 35 hours per week, or more, on a regular basis.

Grant. For the REDG Program only; a transfer of monies other than a loan, from Rural Development to an Intermediary for specific use in funding a Revolving Loan Fund from which loans are made to Ultimate Recipients. Grant funds must be repaid by the Intermediary to Rural Development in the event the Fund is unused for more than one year, misused, no longer needed for its intended purposes, or the Grant is terminated.

Independent Provider. An entity or individual, other than the Intermediary or the Ultimate Recipient that is not owned by a subsidiary or an affiliate of the Intermediary or Ultimate Recipient or would otherwise have an interest in the Intermediary or Ultimate Recipient that would be a conflict of interest or have the appearance of a conflict of interest.

Indirect Job. A job that is created or saved as a result of a funded Project, but is not with the Ultimate Recipient.

Infrastructure. Facilities required to support private sector economic activity such as: Highways, streets, roads, and bridges; public transit; water supply; wastewater treatment; water resources; solid waste; and hazardous waste services.

Intermediary. An entity that is identified by RUS as an eligible borrower under the Rural Electrification Act and obtains a REDG Grant or a REDL Loan.

Part-Time Job. A job for which a worker is scheduled to work less than 35 hours per week, on a regular basis.

Programs. The Rural Economic Development Loan (REDL) and the Rural Economic Development Grant (REDG) Programs.

Project. The facility, equipment, or activity of the Ultimate Recipient that is funded under one of the Programs.

REDG. The Rural Economic Development Grant Program.

REDL. The Rural Economic Development Loan Program.

Revolving Loan Fund (or Fund). A revolving loan fund that is created with Grant funds and the Intermediary's supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

Revolving Loan Fund Plan. A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary's Fund administration

policies and procedures and planned Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

Rural Area. This information will be taken from the most recent census data. Any area other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town.

Rural Business-Cooperative Service (RBS). The Rural Business-Cooperative Service, an agency within the Rural Development mission area of the USDA.

Rural Development. For purposes of this regulation, The Rural Business-Cooperative Service (RBS), an Agency of the United States Department of Agriculture, or a successor Agency, will be referred to as Rural Development.

Rural Utilities Service (RUS). The Rural Utilities Service, an Agency within the Rural Development mission area of the USDA.

Seasonal Job. A job whether Part-Time or Full-Time that begins and ends in accordance with a specified time period of less than a year and generally within a range less than four months.

Start-Up Venture(s). An entity that has engaged in the nature of the Project for less than one year. An entity that has operated in excess of one year, but which is about to enter into a new line of business, would be considered a Start-Up Venture.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical Assistance. Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

Ultimate Recipient. An entity or individual that receives a loan from an Intermediary. The Ultimate Recipient may be a for profit or not-for-profit entity such as, but not limited to, a sole proprietorship, a corporation, a cooperative, a partnership, or a Limited Liability Company. The Ultimate Recipient may also be a public body, such as, but not limited to, a political subdivision of a State or locality, or a Federally-recognized Indian tribe.

Uniform Act. The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601–4655).

USDA. The United States Department of Agriculture.

Zero-Interest Loan. A loan made by the Intermediary to the Ultimate Recipient with no interest and which will be repaid to the Intermediary by the Ultimate Recipient.

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Applicant eligibility.

Applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

§ 4280.14 [Reserved]

§ 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

An Intermediary may receive REDL funds only when it has a pre-approved Ultimate Recipient and Project that have an immediate need for the Zero-Interest Loan. REDL funds may only be used by the Intermediary to make a Zero-Interest Loan to the Ultimate Recipient to finance financially viable economic development or job creation Projects in a Rural Area. Funds may only be used to provide the following assistance:

(a) Start-Up Venture costs, including, but not limited to financing fixed assets such as real estate, buildings (new or existing), equipment, or working capital;

(b) Business expansion;

(c) Business Incubators;

(d) Technical Assistance;

(e) Project feasibility studies;

(f) Advanced Telecommunications services and computer networks for medical, educational, and job training services;

(g) Other Projects eligible under § 4280.21; or

(h) Community Facilities Projects.

§ 4280.16 REDL and REDG Loan terms.

REDL and REDG loans made by the Intermediary are governed by the following terms:

(a) The maximum term of a loan is 10 years, including any principal deferment period. The Intermediary may choose a shorter term if desired.

(b) Deferments on Zero-Interest Loans will automatically be granted by Rural Development upon request of the Intermediary as follows:

(1) A deferral for up to 1 year for Projects involving an Established Operation; or

(2) A deferral for up to 2 years for Projects involving a Start-Up venture or a Community Facilities Project whether or not such Project also receives funding under USDA Community Facilities funding programs.

(c) The Intermediary must provide the Ultimate Recipient with the same loan terms as the Intermediary receives from Rural Development.

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions.

§ 4280.17 Additional REDL terms.

(a) The Intermediary is responsible for fully repaying the Zero-Interest Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.

(b) The Intermediary is responsible for remitting any partial or full payment to RBS at the time the Ultimate Recipient pays the Intermediary.

(c) Unless deferred pursuant to § 4280.16(b) of this subpart, loan payments to Rural Development under the REDL Program are due monthly.

(d) If the Intermediary does not have an outstanding loan with RUS, the Intermediary must immediately provide, as security for any REDL loan it receives, a Rural Development-approved irrevocable letter of credit that remains in effect until the loan is repaid.

§ 4280.18 [Reserved]

§ 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 7 CFR parts 3015, 3019, and 3052, as applicable.

§ 4280.20 [Reserved]

§ 4280.21 Eligible REDG Ultimate Recipients and Projects.

The Intermediary may only make loans from the Revolving Loan Fund to entities located in a Rural area of a State. Eligible entities are as follows:

(a) Non-profit entities, public bodies, or Federally-recognized Indian tribes Ultimate Recipients for:

(1) Community development or Community Facility Projects that:

(i) will create or save employment; and

(ii) are open to and serve all Rural residents, and are owned by the Ultimate Recipient;

(2) Business Incubators;

(3) Facilities and equipment to provide education and training to residents of Rural Areas that will facilitate economic development;

(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(5) Projects that utilize Advanced Telecommunications or computer networks to facilitate medical or educational services or job training; or

(6) Project feasibility studies and Technical Assistance. A qualified Independent Provider must perform feasibility studies or Technical Assistance.

(b) For-profit Ultimate Recipients for Projects under paragraphs (a)(3), (4), (5), or (6) of this section.

§ 4280.22 [Reserved]

§ 4280.23 Requirements for lending from Revolving Loan Fund.

(a) *Supplemental contribution.* The Intermediary must establish a Revolving Loan Fund and contribute an amount equal to at least 20 percent of the Grant. The supplemental contribution must come from Intermediary's funds which may not be from other Federal Grants, unless permitted by law.

(b) *Use of supplemental contribution.* The Intermediary's contribution will only be used to make REDG loans and not other investment purposes. The Intermediary's contribution must remain a permanent part of the Revolving Loan Fund until the Fund is terminated.

(c) *REDG Zero-Interest Loan Requirements.* The Fund is made up of Rural Development and Intermediary contributions and must be loaned in accordance with one of the following 2 options:

(1) The contribution may be used to fund the same Project that Rural Development is funding. The interest rate on that portion of the financing using Rural Development funds will be at zero percent. The interest rate on that portion of the financing using the Intermediary's contribution may be greater than zero percent but must be less than, or equal to, the prevailing prime rate. Using this option, loan security and recovery of loan losses must provide for the pro rata recovery and distribution between the Intermediary and Rural Development based on the respective amounts of each contribution to the total loan amount for the Project.

(2) The Intermediary's contribution may be used to fund Projects separate from the Project financed with Rural Development funds, provided that the Project is eligible in accordance with § 4280.21.

(3) Whether the Intermediary chooses the option under paragraph (c)(1) or paragraph (c)(2) of this section, its contribution must be used to fund an eligible Project within 3 years from the date of the Grant agreement. If the Intermediary fails to use its contribution within this 3-year period, Rural Development will terminate the Grant.

(d) *Intermediary's supplemental funds.* Once revolved, monies from the Fund may be loaned at an interest rate called for in the Revolving Loan Fund Plan, not to exceed the prevailing prime rate.

(e) *Eligible purposes only.* Until the total amount in the Fund has been loaned, all loans must be made for eligible purposes as stated in § 4280.21. After the Fund has been loaned, in accordance with § 4280.21 of this subpart, the Intermediary shall make loans to finance rural economic development purposes in accordance with the Revolving Loan Fund Plan. All loan repayments, including interest earned, must be deposited into the Fund.

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds in accordance with 7 CFR parts 3015 and 3019 if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans.

(g) All REDG Loans must be made to Rural Ultimate Recipients.

§ 4280.24 Revolved funds.

Rural Development and the Intermediary's supplemental funds will be considered revolved after they have been loaned to Ultimate Recipients and subsequently repaid. Loans made from revolved funds will not require prior approval of Rural Development for creditworthiness or environmental clearance purposes. All other Federal compliance requirements, including those in this subpart, remain in effect.

§ 4280.25 Revolving Loan Fund Plan.

Each REDG Intermediary must adopt a Rural Development-approved plan that specifies that:

(a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;

(b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.

(c) Loans made from repayments of REDG loans must be for eligible Program purposes;

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions; and

(e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

§ 4280.26 Administration and operation of the Revolving Loan Fund.

(a) The Intermediary will operate and administer the Revolving Loan Fund. The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.

(b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.

(c) In cases where the Intermediary uses its supplemental contribution to the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

§ 4280.27 Ineligible purposes.

Zero-Interest Loans may not be used:

(a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;

(b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary's completed application;

(c) For any electric or telecommunications purpose or for the Intermediary's electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);

(d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a

Revolving Loan Fund established under the REDG Program;

(e) For community antenna or cable television systems or facilities;

(f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;

(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;

(h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

(j) For a Project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location;

(k) For proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(l) For any illegal activity or any activity involving prostitution;

(m) For Agricultural Production, except where the Project is a farmer-owned cooperative or similar organization where the benefits of the Project are passed on to the farmer-owners, and the Agricultural Production is part of an integrated business that processes the agricultural products, and the Agricultural Production portion of the loan will not exceed 50% of the loan amount;

(n) For any pass-through Grant funding activity (a Grant by the Intermediary to the Ultimate Recipient);

(o) Provision of only local exchange voice telephone service; or

(p) for any other purpose announced in a notice by Rural Development. This will not affect Grants that have already been awarded.

§ 4280.28 [Reserved]

§ 4280.29 Supplemental financing required for the Ultimate Recipient Project.

(a) For REDL loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the Project equal to at least 20 percent of the loan to the Intermediary. For REDG grants, the Intermediary must provide supplemental funds, to capitalize the Revolving Loan Fund, equal to at least 20 percent of the Grant to the Intermediary.

(b) Funds provided by the Ultimate Recipient must be:

(1) Cash or its equivalent;

(2) Provided after Rural Development receives the completed application; and

(3) Disbursed for an eligible Project within a three year period that begins on the day the Intermediary signs the Grant agreement.

(c) Satisfactory evidence of the Ultimate Recipient's funds must be provided to Rural Development before it will advance any funds to the Intermediary.

§ 4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest.* The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted.

(b) *Fees.* The Intermediary may charge reasonable loan servicing fees, which are limited to one percent per year of the principal amount outstanding on the loan; reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service; and reasonable expenses the Intermediary has incurred from Independent Providers.

(c) *Interest earnings.* Any interest earned by the Intermediary on advances of Rural Development REDG or REDL funds prior to the disbursement for the Project, must be returned to Rural Development.

§§ 4280.31–4280.35 [Reserved]

§ 4280.36 Other laws that contain compliance requirements for these Programs.

(a) *Equal employment opportunity.* For all construction contracts and Grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and nondiscrimination.* Rural Development will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d, conducted by USDA. Rural Development will not discriminate against applicants on the bases of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of Grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901 subpart E, § 1901.204. Initial compliance reviews will be conducted with the Intermediary when Form RD 400–4, ''Assurance Agreement,'' is signed. For each loan or Grant an Intermediary receives, a new Form RD 400–4 must be completed. Each Ultimate Recipient must go through the same pre-award compliance review process and must also sign Form RD 400–4. For loans and Grants, a pre-award review is required before loan or Grant approval or any disbursement of funds. For Intermediaries, a post-award compliance review is required 90 days after closing the loan or Grant. This review is not required for Ultimate Recipients. Subsequent compliance reviews will be conducted 3 years from the date the post-award compliance review is completed for Intermediaries and 3 years from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for the Intermediaries for as long as the Fund is in operation. For Ultimate Recipients, compliance reviews are conducted until the loan is repaid to the Fund.

(d) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and the ''Uniform Federal Accessibility Standards'', (41 CFR part 101–19.6, Appendix A).

(e) *Uniform relocation assistance.* Relocations in connection with these

Programs are subject to 49 CFR part 24 as referenced by 7 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these Programs.

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 7 CFR part 3021 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–706). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 7 CFR part 3017 are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 7 CFR part 3015, subpart V which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 7 CFR part 3015.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 7 CFR part 3018, are applicable to these Programs.

(j) *Earthquake hazards.* These Programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(k) *Environmental requirements.* The requirements of 7 CFR part 1940, subpart G, are applicable to these Programs and to the loans made from the Revolving Loan Fund using Rural Development funds. Financial assistance from the Revolving Loan Fund, when funds are derived from repayments by third parties, is not considered Federal assistance for purposes of meeting the compliance requirements of 7 CFR part 1940, subpart G.

(l) *Affirmative fair housing.* If applicable, the Intermediary will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631).

(m) *Flood hazard insurance.* These Programs are subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129.

(n) *Audits.* These Programs are subject to 7 CFR part 3052.

§ 4280.37 Application forms and filing dates.

(a) The Intermediary may obtain forms that supplement the written narrative sections of its application from the Rural Development State Office for the State where the Intermediary is located.

(b) An original copy only of the application is to be filed with the Rural Development State Office. No other copies are required.

§ 4280.38 Maximum amount of loans or Grants.

During any given fiscal year, Rural Development will publish an announcement of available loan and Grant funds and will indicate the maximum loan and Grant amounts for which an Intermediary or prospective Intermediary may apply. This announcement will also include contact information and application deadlines. All pending applications on file at RBS, including both loan and Grant applications, from the same Intermediary or prospective Intermediary for the same Project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

§ 4280.39 Contents of an application.

An application for a loan or a Grant must contain the following:

(a) Required forms and certifications:

(1) Standard Form 424, ''Application for Federal Assistance,'' signed by an authorized representative of the Intermediary.

(2) A Resolution of the Board of Directors signed by the directors and certified by the Intermediary's board secretary. The board resolution must indicate whether the Intermediary is requesting a loan or Grant, agree to the provisions of this subpart and the loan or Grant agreement including the Intermediary's 20 percent Fund contribution, and state that the Intermediary has the legal authority to enter into a loan or Grant agreement under these Programs;

(3) Form AD 1047, ''Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,'' and Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions.''

(4) Assurance statement for the Uniform Act signed by the Ultimate Recipient. This statement provides Rural Development with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing the Ultimate Recipient Project, will be handled in accordance with this statute.

(5) RD Instruction 1940–Q, Exhibit A–1, applies if the loan is greater than $150,000 or the Grant is greater than $100,000;

(6) SF LLL, ''Disclosure of Lobbying Activities,'' (if the Intermediary or the Ultimate Recipient engages in lobbying activities);

(7) Form AD 1049, ''Certification Regarding Drug-Free Workplace Requirements,'' for Grants only;

(8) Seismic certification if construction of a building is proposed. The Project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes;

(9) Form RD 1940–20, ''Request for Environmental Information''; and

(10) RUS Form 7, ''Financial and Statistical Report'' and RUS Form 7a ''Investments, Loan Guarantees, and Loans,'' or similar information.

(b) A written narrative section must be provided. This section consists of the following:

(1) A Project description, including details of the work to be performed with Rural Development funds, and a business plan, including a discussion of management and prior experience of the Ultimate Recipient.

(2) A discussion of how the Project meets each selection factor in § 4280.42(b).

(3) A Revolving Loan Fund Plan is required if the Intermediary is applying for a Grant to establish a Revolving Loan Fund.

§ 4280.40 [Reserved]

§ 4280.41 Environmental review of the application.

(a) Rural Development will conduct a review for the potential of any environmental impacts resulting from the proposed Project identified in the application and inform the Intermediary of any additional information Rural Development needs and any subsequent environmental requirements necessary for Rural Development to make a finding.

(b) Rural Development will conduct all necessary environmental reviews as prescribed in 7 CFR part 1940, subpart G. These reviews must be completed before the application can be considered for approval.

§ 4280.42 Application evaluation and selection.

(a) Rural Development will evaluate the application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

(b) The application will be evaluated and scored using the information provided in accordance with § 4280.39(b)(2) of this subpart.

(1) *Nature of the Project.* Rural Development will award up to 60 points based on whether the Project:

(i) Is a for-profit business, Business Incubator, industrial building or park, or an infrastructure connection project (such as streets or utilities)—20 points;

(ii) Provides Technical Assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;

(iii) Will enhance rural economic development by providing Advanced Telecommunications services and computer networks for medical, educational, and job training services. This review will be based on the application's telecommunications design—20 points.

(2) *Number of direct full-time equivalent jobs created or saved within a 3-year period.* To calculate full-time equivalent Direct-Jobs, count two part-time jobs as one full-time job or three part-time or seasonal jobs as one full-time job. If the total numbers of part-time and seasonal jobs add up to a fraction, round up to the next whole number after combining same. Indirect-Jobs or non-Rural jobs cannot be used for this calculation.

If the number of Rural full-time equivalent direct-jobs jobs created or saved per $100,000 of total, Project cost is:	Then Rural Development will award:
(i) Greater than five	25 points.
(ii) From one to five	15 points.

(3) *Supplemental funds for the Project.* Points will be based on a calculation of the amount of supplemental funds to be provided to the Project. All supplemental funds used in the following calculation must be disbursed to the Project between the date of Rural Development receipt of the application and 1 year after the first advance of funds by Rural Development:

If supplemental funds as a percentage of the Rural Development loan or grant to be provided to the Project are:	Then Rural Development will award:
(i) Greater than 200%	20 points.
(ii) From 100% to 200%	10 points.
(iii) From 50% to less than 100%	5 points.

(4) *Unemployment rate for the county(ies) where the Project is physically located.* Rural Development will compare the current unemployment rate(s) in the county(ies) to the State and national unemployment rates, and, if applicable, award points under the following categories, whichever is greater:

If the unemployment rate(s) in the county(ies) where the Project will be located:	Then Rural Development will award:
(i) Exceeds the national unemployment rate by 30% or more	15 points.
(ii) Is greater than the national unemployment rate, but exceeds it by less than 30%	5 points.
(iii) Exceeds the State unemployment rate by 30% or more	10 points.
(iv) Is greater than the State unemployment rate but exceeds it by less than 30%	5 points.

(5) *Per capita personal income for the county(ies) where the Project is physically located.* Rural Development will compare the per capita personal income in the county(ies) where the Project will be located to the national and State per capita personal income levels, and, if applicable, award points under the following categories, whichever is greater:

If the per capita personal income level in the county(ies) is:	Then Rural Development will award:
(i) Less than or equal to 90% of the national level	15 points.
(ii) Between 90 and 100% of the national level	5 points.
(iii) Less than or equal to 90% of the State level	10 points.
(iv) Between 90 and 100% of the State level	5 points.

(6) *Rural Area location.* (i) If the Project is physically located in an incorporated city or town or equivalent having a population of 1,249 or less, or if it is physically located in an unincorporated area, Rural Development will award 20 points.

(ii) If the Project is physically located in an incorporated area having a population of 1,250 to 2500, Rural Development will award 10 points.

(7) *Decline in population for the county where the Project is physically located.* If there has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial censuses of the United States to the present, Rural Development will award 10 points.

(8) *Cushion of Credit Payments.* Rural Development will determine the level of Cushion of Credit Payments on deposit by the Intermediary, as follows:

If the Intermediary's Cushion of Credit account level is:	Then Rural Development will award:
(i) In excess of $300,000, or a dollar amount in excess of 3 percent of the Intermediary's total assets, whichever is less	15 points.
(ii) Within the range of $100,000 to $299,999.99, or a dollar amount that is within the range of one percent to 2.99 percent of Intermediary's total assets, whichever is less.	10 points.
(iii) Within the range of $10,000 to $99,999.99, or a dollar amount that is within the range of 0.5 percent to .99 percent of Intermediary's total assets, whichever is less.	5 points.

(9) *Initial loan and Grant.* If the loan or Grant application will result in the first award to an Intermediary under these Programs, Rural Development will award 10 points.

(10) *County participation.* If the Project will be the first REDLG Project financed in a county Rural Development will award 10 points.

(11) The business plan for the Applicant's Ultimate Recipient will be evaluated by Rural Development and must include:

(i) A description of the business or Project plans, its management, and, if applicable, its products and operating plans. (The business plan evaluated by Rural Development for Advanced Telecommunications will be its telecommunications and engineering design)—up to 15 points; and

(ii) An appropriate financial plan, including actual balance sheets and income statements covering the most recent 3-year period (for applicants who have been in business this long), and projected balance sheets, income statements, and cash flow statements for the ensuing 3-year period, supported by assumptions showing the basis for the projections—up to 20 points.

§ 4280.43 Discretionary points.

The RBS Administrator has the discretion to designate up to 25 points (no more than 5 points for each of the following elements) based on whether the Project:

(a) Is located in a Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county's most recent unemployment rate compared with the same period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Is located in a county that was designated a disaster area by the President of the United States that significantly affected rural economic development and job creation. The county must have been designated within 3 years prior to filing of the completed application with Rural Development; or

(e) Is consistent with the Rural Development State Office's approved strategic plan and mission area objectives and is identified as a priority area for assistance in the States' plan.

§ 4280.44 Limitation on number of loans or Grants to an Intermediary.

Depending on the amount of funds available, Rural Development may publish an announcement limiting an Intermediary to one selected Grant application and two selected loan applications in a fiscal year.

§§ 4280.45–4280.46 [Reserved]

§ 4280.47 Non-selection of applications.

Provided the application requirements have not changed, an application not selected will be reconsidered in 3 subsequent funding competitions for a total of four funding competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

§ 4280.48 Post selection period.

Rural Development will notify the Intermediary in writing if the application is selected. The documents to be executed by the Intermediary will include:

(a) For a loan:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A loan agreement with general terms and conditions;

(3) A note covering the repayment terms of the loan; and

(4) A legal opinion concerning the authority of the Intermediary to engage in the Project.

(b) For a Grant:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A Grant agreement with general terms and conditions; and

(3) A legal opinion concerning the authority of the Intermediary to participate in the Revolving Loan Fund and to engage in the Project.

§ 4280.49 [Reserved]

§ 4280.50 Disbursement of Zero-Interest Loan funds.

(a) For a REDL loan, Rural Development will disburse Zero-Interest Loan funds to the Intermediary in accordance with the terms of the executed loan agreement. All loan funds will be disbursed either as an advance to the Intermediary, in multiple advances, or as a reimbursement for eligible project costs, once the Intermediary has complied with Rural Development requirements.

(b) The Intermediary must provide to the Ultimate Recipient all loan funds that the Intermediary receives from Rural Development within one year of receiving them. If the Intermediary does not re-lend Rural Development funds within one year, the loan funds, and all interest earned on the loan funds, must be returned to the Agency.

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 7 CFR parts 3015 and 3019, as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

(1) The Intermediary has established written procedures that will minimize the time elapsing between the transfer of funds from Rural Development and their disbursement to the Ultimate Recipient;

(2) The management system of the Intermediary meets the requirements of 7 CFR parts 3015 and 3019, as applicable;

(3) All necessary supplemental funds for the Project have been obligated or committed to the Revolving Loan Fund; and

(4) The requests for cash advances made by the Intermediary are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs of the Ultimate Recipient for carrying out the Project.

§§ 4280.51–4280.52 [Reserved]

§ 4280.53 Loan payments.

The Intermediary must make all REDL payments to Rural Development by

electronic funds transfer or other means as specified in the loan documents.

§ 4280.54 Construction procurement requirements.

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§ 4280.55 Monitoring responsibilities.

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 7 CFR parts 3015, 3017, 3018, 3019, 3021, and 3052.

§ 4280.56 Submission of reports and audits.

(a) In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development:

(1) *Loan.* The Intermediary must submit Form RD 4280–1 ''Survey of Recipients of Rural Economic Development Loan and Grant Program'' to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) *Grant (Revolving Loan Fund).* The Intermediary must submit the Form RD 4280–1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280–1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 7 CFR part 3052.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 7 CFR part 3052, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in OMB Circular No. A–133.

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 Appeals.

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

§ 4280.63 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

(c) *Rural area definition.* No exception to the definition of rural area, as defined, can be made.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: May 17, 2007.

Douglas L. Faulkner,

Deputy Under Secretary, Rural Development.

[FR Doc. 07–2636 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[Docket No. USCIS–2006–0044; CIS No. 2393–06]

RIN 1615–AB53

Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately reflect current USCIS processes or recover the full costs of services provided by USCIS. Without an immediate adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. In addition, the revised fees will eliminate USCIS' dependency on revenue from interim benefits, temporary programs, and premium processing fees. This rule also merges fees for certain applications and petitions so applicants and petitioners will only have to pay a single fee. In addition, the rule expands the classes of aliens that will be exempt from paying filing fees for certain immigration benefits, and modifies the criteria for waiving the filing fee due to an individual's inability to pay. Based on comments received by USCIS during the public comment period, this rule changes the fees for adjustment of status applications, and the fee waiver and exemption eligibility criteria for several immigration benefits. This final rule will provide sufficient funding for USCIS to meet national security, customer service, and processing time goals, and to sustain and improve service delivery.

DATES: This rule is effective July 30, 2007. Applications or petitions mailed, postmarked, or otherwise filed, on or after July 30, 2007 must include the new fee.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Budget Division, Office of Planning, Budget and Finance, United States Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 4052, Washington, DC 20529, telephone (202) 272–1930.

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List of Acronyms and Abbreviations

ABC—Activity-Based Costing
BSS—Biometrics Storage System
CBP—United States Customs and Border Protection
DHS—Department of Homeland Security
EAD—Employment Authorization Document
FBI—Federal Bureau of Investigation
FDNS—Fraud Detection and National Security
FY—Fiscal Year
GAO—Government Accountability Office
GDP—Gross Domestic Product
HSA—Homeland Security Act
ICE—United States Immigration and Customs Enforcement
IEFA—Immigration Examinations Fee Account
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
IOAA—Independent Offices Appropriation Act
LPR—Lawful Permanent Resident
OIG—Office of Inspector General
OMB—Office of Management & Budget
OPT—Optional Practical Training
PPBS—Planning Programming Budgeting System
SSA—Social Security Administration
TPS—Temporary Protected Status
USCIS—United States Citizenship and Immigration Services
VAWA—Violence Against Women Act
ZBB—Zero Based Budget

I. Background

On February 1, 2007, U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking proposing to adjust USCIS' immigration and naturalization benefit fee schedule. 72 FR 4888. USCIS' current fee schedule does not establish a level of funding sufficient to fully fund USCIS operations, allow for future requirements, ensure adequate staffing, or provide USCIS with funding sufficient for technological capabilities to continue or improve timely and efficient processing of immigration benefits. The fees that fund the IEFA were last updated on October 26, 2005, but merely to adjust the existing fee schedule to reflect inflation. *See* 70 FR 56182 (Sept. 26, 2005). The last comprehensive fee review was conducted in fiscal year 1998 by the Immigration and Naturalization Service (INS). *See* 63 FR 1775 (Jan. 12, 1998) (proposed rule); 63 FR 43604 (Aug. 14, 1998) (final rule fee adjustment).

In 2004, the Government Accountability Office (GAO) reported that the fees collected by USCIS were insufficient to fund USCIS operations. GAO, *Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations* (GAO–04–309R, Jan. 5, 2004). GAO recommended that USCIS ''perform a comprehensive fee study to determine the costs to process new immigration applications.'' *Id.* at 3. In response to GAO's recommendations, USCIS undertook a comprehensive fee review to revise its application and petition fees to ensure full recovery of its operational costs.

As discussed in the proposed rule, the Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. INA section 286(m), 8 U.S.C. 1356(m). The INA also states that the fees may recover administrative costs as well. *Id.* The fee revenue collected under INA section 286(m) remains available to provide immigration and naturalization benefits and the collection of, safeguarding of, and accounting for fees. INA section 286(n), 8 U.S.C. 1356(n).

USCIS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03. The CFO Act requires each agency's Chief Financial Officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.* at 902(a)(8). This final rule reflects recommendations made by the DHS CFO and USCIS CFO as required under the CFO Act.

Office of Management and Budget (OMB) Circular A–25 establishes Federal policy regarding fees assessed for Government services and the basis upon which federal agencies set user charges sufficient to recover the full cost to the Federal Government. OMB Circular A–25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993) (OMB Circular A–25). Under OMB Circular A–25, the objective of the United States Government is to ensure that it recovers the full costs of providing specific services to users. Full

costs include, but are not limited to, an appropriate share of—

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency. *Id*; *see also* OMB Circular A–11, section 31.12 (June 30, 2006) (Fiscal Year (FY) 2008 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html*. When developing fees for services, USCIS also looks to the Federal Accounting Standards Advisory Board (FASAB) which defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id*. at 33–42.

USCIS entered supporting fee review documentation for this rulemaking and its methodology, including budget methodology analyses and regulatory flexibility analyses, into the public docket. *See http://www.regulations.gov*, docket number USCIS–2006–0044. A more detailed discussion of USCIS' fee review can be found in the proposed rule for this rulemaking action at 72 FR 4888.

II. Final Rule

This fee rule sets out fees to recover the full costs of USCIS operations. Without these fee adjustments, USCIS will not be able to maintain critical business functions, properly address fraud and national security issues, or process incoming applications and petitions in a timely manner. The revised fee schedule will close existing funding gaps and allow USCIS to take specific and demonstrable steps to strengthen the security and integrity of the immigration system, improve customer service, and modernize business operations. The fee revenue generated by the revised fee schedule will support increased security and fundamentally transform and automate USCIS business operations, all of which will greatly strengthen the ability of USCIS to perform its mission and place USCIS in a better position to support possible future legislative reforms. This fee rule assumes that no new appropriation will be enacted.

This final rule largely implements the fee structure described in the proposed rule, but makes some adjustments to the fee schedule based on public comments received. This rule also expands the proposed fee waiver policy to include additional classes of applicants and petitioners who may apply for a waiver of certain application and petition fees for certain services. The rationale for each change is discussed in the section of the rule that discusses comments on that issue. The specific changes made are summarized as follows.

A. Application To Register Permanent Residence or Adjust Status

In the proposed rule, the proposed fee of $905 for an Application to Register Permanent Residence or Adjust Status, Form I–485, was based on USCIS' projected overall cost of processing the average application, regardless of the applicant's age. Under the final rule, the standard fee for filing a Form I–485 by an individual will be $930; the fee for a child under the age of fourteen years will be $600 when submitted concurrently for adjudication with the application of a parent under sections 201(b)(A)(i), 203(a)(2)(A), or 203(d) of the INA. The comments received on this issue and the rationale for making this change are discussed in section III.D.2 below.

B. Intercountry Adoptions

In the proposed rule, the proposed fee of $670 for filing an Application for Advance Processing of Orphan Petition, Form I–600A, was based on USCIS' projected overall cost of processing the average application. This final rule does not change that proposed fee, retaining it at $670. However, the final rule provides that the first request for extension of the approval of an Application for Advance Processing of Orphan Petition will be accepted without a fee if the request is filed in advance of the expiration of the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I–171H, and no Petition to Classify Orphan as Immediate Relative, Form I–600, has been filed with USCIS for adjudication. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application.

This final rule also provides that no biometric fee will be charged for an update of an approved Application for Advance Processing of Orphan Petition. Section III.D.4. below discusses the comments received in this area and the reasons for making this change.

C. Fee Waivers and Exemptions

The final rule alters the proposed rule regarding fee waivers in three important ways:

- It permits an application for a fee waiver for the Application for Adjustment of Status from asylees, victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners, and Special Immigrant—Juveniles.
- It provides that a ''Special Immigrant—Juvenile'' will not be charged a fee for submitting the Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360.
- It permits an application for fee waiver of the biometric fee.

These three changes represent a significant expansion of the fee waiver policy from what was proposed and will ensure that many applicants or petitioners, who may have faced financial hardship as a result of these fees, may now have that hardship alleviated. Section III.E. below discusses these changes and the comments received in this area more fully.

D. Miscellaneous Changes and Corrections

The final rule makes a few clarifying changes to the regulatory text in the proposed rule. First, as a result of a comment, USCIS found that the fee schedule contained a form that was no longer being used. As a result, references to the entry for Application for Change of Nonimmigrant Classification, Form I–506, are removed by this rule. Second, the explanation of the fee for a Motion, Form I–290B, was found to be outdated in that the section had not been updated to comport with changes that had been made to 8 CFR part 242 and 8 CFR 1003.8. This rule also clarifies that fee to reflect current procedures and policies and the applicability of the Motion fee. Finally, the maximum fee proposed for Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603),[1] Form I–698, and Application for Status as a Temporary Resident under Section 245A of the Immigration and

[1] Immigration Reform and Control Act of 1986, Public Law 99–603, tit. II, sec. 201, 100 Stat. 3359, 3394 (Nov. 6, 1986).

Nationality Act, Form I–687, to be paid by a family with children under eighteen years of age living at home was removed from the final rule. The statutory eligibility requirements for adjustment of status under Public Law 99–603 preclude anyone who is currently under age eighteen from eligibility. Accordingly, that provision was obsolete.

E. Summary of Final Fees

The USCIS Immigration and Naturalization Benefit Application and Petition Fee Schedule, the proposed fees, and the final fees established by this rule are summarized in the attached table.

Form No.	Description	Current fees	Proposed fees	Final fees
I–90	Application to Replace Permanent Resident Card	$190	$290	$290
I–102	Application for Replacement/Initial Non-immigrant Arrival-Departure Record (I–94).	160	320	320
I–129	Petitions for a Nonimmigrant Worker	190	320	320
I–129F	Petition for Alien Fiancé(e)	170	455	455
I–130	Petition for Alien Relative	190	355	355
I–131	Application for Travel Document	170	305	305
I–140	Immigrant Petition for Alien Worker	195	475	475
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	265	545	545
I–192	Application for Advance Permission to Enter As a Nonimmigrant	265	545	545
I–193	Application for Waiver of Passport and/or Visa	265	545	545
I–212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal.	265	545	545
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	190	375	375
I–485	Application to Register Permanent Residence or Adjust Status	325	905	930
I–526	Immigrant Petition by Alien Entrepreneur	480	1,435	1,435
I–539	Application to Extend/Change Nonimmigrant Status	200	300	300
I–600/I–600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	545	670	670
I–601	Application for Waiver of Grounds of Inadmissibility	265	545	545
I–612	Application for Waiver of the Foreign Residence Requirement	265	545	545
I–687	For Filing Application for Status as a Temporary Resident	255	710	710
I–690	Application for Waiver of Excludability	95	185	185
I–694	Notice of Appeal of Decision	110	545	545
I–695	Application for Replacement Employment Authorization or Temporary Residence Card.	65	130	130
I–698	Application to Adjust Status from Temporary to Permanent Resident	180	1,370	1,370
I–751	Petition to Remove Conditions on Residence	205	465	465
I–765	Application for Employment Authorization	180	340	340
I–817	Application for Family Unity Benefits	200	440	440
I–824	Application for Action on an Approved Application or Petition	200	340	340
I–829	Petition by Entrepreneur to Remove Conditions on Residence	475	2,850	2,850
I–881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal.	285	285	285
I–914	Application for T Nonimmigrant Status	270	0	0
N–300	Application to File Declaration of Intention	120	235	235
N–336	Request for Hearing on a Decision in Naturalization Procedures	265	605	605
N–400	Application for Naturalization	330	595	595
N–470	Application to Preserve Residence for Naturalization Purposes	155	305	305
N–565	Application for Replacement of Naturalization Citizenship Document	220	380	380
N–600	Application for Certification of Citizenship	255	460	460
N–600K	Application for Citizenship and Issuance of Certificate under Section 322	255	460	460
	Biometric Services	70	80	80

III. Public Comments on the Proposed Rule

USCIS provided a 60-day comment period in the proposed rule and received more than 3,900 comments.[2] USCIS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, State and local governmental entities, educational and other not for profit institutions, labor organizations, corporations, and individuals. Many comments addressed multiple issues. USCIS received hundreds of comments through many distinct form letters and mass mailings that were identical or nearly identical in content. Many comments provided variations on the same substantive issues.

The comments ranged from strongly supportive of the increased fees to strongly critical. Many comments provided critiques of the methodology and the proposed fee schedule; some suggested alternative methods and funding sources.

USCIS also invited the public to access the commercial software utilized in executing the budget methodology and developing the proposed rule to facilitate public understanding of the fee modeling process explained in the supporting documentation. 72 FR 4889. USCIS received no requests for such access to the modeling program.

On February 14, 2007, the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security,

[2] All comments may be reviewed at the Federal Docket Management System (FDMS) at *www.regualtions.gov,* docket number USCIS–2006–0044. The public may also review the docket upon request by contacting USCIS through the contact information listed in this rule. [0]

and Immigration Law heard testimony from the USCIS Director on the fee proposal during the public comment period. USCIS has included an unofficial transcript of that hearing in the docket. See, Proposal to Adjust the Immigration Benefit Application and Petition Fee Schedule, 110th Congress, 1st Sess. (Feb. 14, 2007).

USCIS leadership met with stakeholders and conducted ''question and answer'' sessions during the public comment period at various cities throughout the United States, including: Washington, DC.; Los Angeles, California; New York, New York; Chicago, Illinois; Detroit, Michigan; Boston, Massachusetts; San Francisco, California; San Jose, California; Dallas, Texas; Phoenix, Arizona; and Denver, Colorado. Participants were encouraged to submit written comments on the rule.

USCIS considered the comments received, the congressional hearing transcript, the content of the public meetings, and all other materials contained in the docket in preparing this final rule. Throughout the comment period, USCIS conducted a ''rolling'' review process. Comments were reviewed as soon as practical after receipt and re-reviewed in light of subsequent comments. The review process was very resource intensive and it permitted USCIS to develop a continuous understanding of the issues presented and maturation of consideration of the issues most commonly presented.

A number of comments were not relevant to the substance of the proposed rule and criticized the rule for not addressing other immigration law issues. Many commenters suggested changes in the substantive regulations implementing the immigration laws by USCIS, United States Customs and Border Protection (CBP), United States Immigration and Customs Enforcement (ICE), and other agencies. These comments are beyond the scope of this rulemaking.

The final rule does not address comments seeking changes in United States statutes, changes in regulations or applications and petitions unrelated to or not addressed by the proposed rule, changes in procedures of other components within the Department of Homeland Security (DHS) or other agencies, or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS.

The public may also review any item in the docket upon request by contacting USCIS through the contact information listed in this rule.

A. General Comments

Numerous comments supported the rule, although many of those were qualified by expectations that the fee increase will result in better service. Many of these comments emphasized that the costly delays in case processing are far more expensive to applicants and petitioners than the cost of the discrete filing fee. Others emphasized that filing fees are often a small portion of the total cost incurred by an individual or family immigrating to the United States.

In addition, many comments criticized the level of fees and the amount of the fee increase. A significant number of comments criticized the proposed fee schedule, suggested that the fee increase would impede immigration, or argued that specific fees should not be increased at all or not by the amount proposed. Many commenters disagreed with the budget decision to fund USCIS entirely from fees and argued that USCIS should seek an appropriation from Congress.

B. Relative Amount of Fees

A significant number of commenters argued that the proposed fees were too low. Some expressed general concerns about immigration levels. Others argued that fees should be high enough to cover all immigration related costs, not simply application and petition processing and related USCIS costs, so taxpayers are not asked to pay for someone entering, residing, or seeking services in the United States.

1. Recovery of Additional Costs and Enhancements

Many comments suggested that even greater increases could be used to further improve customer service, stating that this result would reduce the perceived need for an individual to seek the assistance of an attorney to understand and navigate the immigration benefits application and petition process. Other comments suggested that fees should not be based on USCIS' costs of administration, but on the value of the benefit received by the applicant (e.g., United States citizenship). Additionally, some comments pointed out that many aliens make large payments to those who help them enter the United States illegally, suggesting that this demonstrated the willingness to pay more to enter and remain in this country legally or illegally.

Some comments supporting the proposed fees, or even higher increases, asserted that the fee increases are not significant when viewed in a broader context. Some cited the value of naturalization relative to the cost. Others noted that most people must be permanent residents for five years before they can apply for United States citizenship and the proposed fee requires saving less than $10 per month toward that goal. Other examples were also cited, including the fact that the fee for a petition for a relative, fiancé, or orphan is a very small part of the total cost of bringing that person to the United States.

The filing fees proposed and established under this rule are significantly higher than applicants and petitioners pay today. These fees, however, are based only on the costs associated with adjudicating applications.

Several comments suggested that the fee increases were overdue and should have been implemented long ago. These commenters agreed with the proposed rule that the fee increases were necessary to increase the effectiveness of USCIS services. They recommended quick implementation of this rule so USCIS could begin making the planned improvements to its operations as soon as possible. As stated in the proposed rule, the current fee schedule does not generate enough revenue for USCIS to even process the current volumes of applications and petitions in a timely manner. As the Director of USCIS stated in his testimony before Congress on February 14, 2007, USCIS intends to implement this fee increase in the summer of 2007 so that it can begin its efforts to reduce average application processing times. This plan was also stated in the USCIS press release of January 31, 2007. USCIS plans to begin collecting these new fees in order to begin fully recovering its costs and obtaining the resources necessary to timely process applications. Thus, the commenters' suggestions are being recognized, but they are in line with original plans of USCIS.

Specific comments suggested that the application fee for a Petition for a Nonimmigrant Worker, Form I–129 (Nonimmigrant Worker Petition), which is filed by businesses seeking to allow aliens to work in the United States, should be increased. According to these comments, higher fees should offset or alleviate the stress that these workers placed on the infrastructure of the United States, increased demand for governmental services, impact on the American labor market, reduced opportunities for citizens, and lowered salaries for American workers. Similarly, some comments suggested that a portion of fees should reimburse States for providing job training programs.

Although a number of comments suggested that USCIS increase fees further it is important to note that the purpose of filing fees is to only recover the costs associated with providing a benefit or service. Filing fees are not designed to function like tariffs and generate general revenue to support broader policy decisions, or like fines to deter certain behaviors. The filing fees are not intended to influence public policy in favor of or in opposition to immigration, limit immigration, support broader infrastructure, or impact costs beyond USCIS.

Other comments suggested that increasing specific fees, such as for an Application to Extend/Change Nonimmigrant Status, Form I–539, would serve as a deterrent to reinstatement applications and, instead, cause more aliens to remain in the United States longer than their period of authorized stay.

USCIS considered these suggestions and others and in some cases, discussed further in this rule, made changes in response to public comments. These changes though continue to follow the President's FY 2007 Budget which called for USCIS to reform its fee structure, and the GAO recommendation that USCIS ''perform a comprehensive fee review to determine the costs to process new immigration applications.'' This rule is designed to establish fees sufficient to reimburse the full, necessary, ongoing, and projected costs of processing immigration benefit applications and petitions and the related operating costs of USCIS.

While USCIS has authority to collect fees for certain broader costs of administering the United States' immigration system, it has chosen to structure the fees to only recover the full cost of operating USCIS. USCIS believes that this decision is the most consistent with broader Administration policy on user fees and the intent of Congress in the enactment of, and amendments to, section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). Accordingly, USCIS has not changed fees based on these comments.

2. Proposed Fees Are Unreasonably High

The largest number of comments opposed the proposed fee increases in general terms or highlighted particular applications and petitions and argued that the proposed fee increases would effectively exclude aliens generally, or groups of aliens, from immigration benefits and services. Some suggested that fee increases send the wrong message to people who are attempting to comply with the immigration benefit process and United States immigration laws in good faith, and that higher fees may discourage legal immigration while encouraging aliens to attempt to enter the United States and work illegally. These comments reflect another specific position on the larger issues of immigration law and policy that aliens should be induced to immigrate to the United States. As noted above in relation to the opposite position, the purpose of the fee schedule is not to establish policy, but to recover the costs necessary to operate USCIS. Accordingly, the final rule does not adjust the fee schedule in response to these comments.

A portion of these comments argued that the fee increases would result in a decrease in applications and petitions. Contrary to the opinions expressed, USCIS records do not reflect any empirical evidence suggesting a long-term reduction in the demand for immigration benefits resulting from fee increases. While fees at an extremely high level could be a factor in whether or not someone files an application with USCIS, neither past fee increases nor the incremental increases in this rule begin to approach the level necessary to have any significant impact on the demand for USCIS benefits. USCIS acknowledges that short-term increases in applications and petitions occur after a fee increase has been announced, followed by short-term decreases in demand immediately after the fee increases become effective. This fluctuation is a normal result of an increase in the cost of any service, whether governmental or private. Generally, applicants and petitioners with the ability to file do so before fees increase. Individuals logically choose to pay a lower price for a service if and when available. However, USCIS records indicate that demand returns to normal shortly after the effective date of a fee increase. When the Immigration and Naturalization Service (INS) conducted the last comprehensive fee review in FY 1998 and fees increased, on an average percentage basis, more than they increase in this rule, the demand for immigration benefits remained fairly constant shortly thereafter. In any case, USCIS fees are generally believed to be only a portion of the total expenses incurred by a typical applicant.

These comments infer that these temporary fluctuations undercut the stability of the funding stream to be generated by the proposed fees. USCIS acknowledges that slight fluctuations will occur and will be reflected in the funding stream, but these fluctuations are not significant enough, in the context of the overall USCIS budget, to adversely affect services.

3. Improve Service, Reduce Inefficiencies

a. Service improvement and fees.

Many comments noted lengthy waiting times to process immigration benefit applications and petitions and highlighted the need to improve overall customer service. These comments suggested that, regardless of whether the proposed fees were justified, applicants and petitioners should not be asked to pay the full fee increase until USCIS improves service. Others suggested that even if fees were increased before service level improvements were made, there should be detailed commitments to service level improvements to ensure that increased revenues are used to improve service.

Some comments stated that USCIS has increased fees before with the promise of enhanced services, but never fully delivered on that promise. Other comments indicated that the proposed rule does not outline an overall strategic plan for improvements, with measurable benchmarks and tangible goals for implementing the needed upgrades, or a specific timeline or completion schedule to assure interested parties that these improvements will actually be accomplished. One commenter complained that customer service and processing backlogs have not improved enough to justify such a steep fee increase.

These comments illustrate the main distinction between the revised fee schedule and current one in that the current fee schedule does not reflect the existing costs of performance. The current fee schedule does no more than sustain USCIS operations and provide for delivery of benefits at an unacceptable level. Historically, USCIS balanced resource requirements to allocate insufficient revenues from a fee structure that did not recover full costs. The new fee structure is designed to maintain sufficient capacity to meet appropriate performance standards and goals, while sustaining performance through investments to deliver continuous improvements into the foreseeable future. USCIS acknowledges the commenters' concerns, and believes that these concerns will be satisfied, at least in part, after implementation of the new fee structure.

USCIS is required by law to review its fees at least once every two years. 31 U.S.C. 902(a)(8). USCIS has established a dedicated staff in its Office of Planning, Budget, and Finance to conduct future comprehensive analyses. USCIS is firmly committed to seeking

improved ways of doing business and reengineering processes in order to contain costs. The new fee structure will enable USCIS to make improvements that may ultimately help avoid future increases and possibly reduce costs. Process improvements implemented over the past several years, as well as projected productivity increases, are taken into account in the current fee review, keeping fees lower than they might otherwise have been. Future productivity enhancements will produce lower costs per unit that will be reflected in future price adjustments.

The fees are based on the costs necessary to sustain the processing of applications and petitions. If fees collected remain below processing costs, the imbalance will, as it has in the past, result in a backlog. Backlogs mean customers will not receive the benefits and services for which they have applied in a timely manner. A structural deficit between costs and fees will also mean USCIS cannot effectively sustain operations because of insufficient capital to invest in improvements. Over time, a structural deficit between costs and fees will create and accelerate the growth of backlogs and deteriorate service levels. Delays caused by the inability to meet demand resulting from fees set below cost often have far more impact on the person than the discrete application or petition fee.

The proposed fee adjustments and this final rule reflect these concerns. Over the past several years, USCIS received appropriated funds to reduce processing times and meet the President's goal of a six-month or less processing time for nearly all immigration benefit applications and petitions. By the end of FY 2006, the application and petition backlog had fallen from a high of 3.8 million cases in January 2004 to less than 10,000 considered under USCIS control. The total volume of pending cases is currently less than the backlog was at its height, which shows real and substantial progress.

USCIS has also made many customer service improvements, including, but not limited to, expanding online capabilities (such as online filing, change of address and case status updates), INFOPASS appointments (providing the ability to go online to make, cancel, or reschedule appointments with a USCIS Immigration Information Officer), and introducing a broad range of fact sheets to help the public understand various benefits, eligibility criteria, and USCIS procedures. These improvements were made prior to the proposed fee increase. With the revenue generated from the new fee schedule, USCIS will be able to deliver significant additional improvements. Until USCIS aligns its fees with costs, however, it will be unable to afford sufficient capacity to process incoming applications and petitions, resulting in backlogs.

b. Inefficiency in business-related visas.

Some comments highlighted particular inefficiencies and suggested that correcting these would mitigate the need for fee increases. An example of inefficiency mentioned by many commenters was the long processing delays for employment-based visa categories, including the immigrant employment-based classifications and the nonimmigrant classifications such as the temporary employee H nonimmigrant visa, and the intra-company transferees L nonimmigrant visa.

USCIS acknowledges that it does not always quickly and efficiently process the Immigrant Petition for Alien Worker, Form I–140 (Alien Employee Petition) for firms requesting USCIS approval to hire a foreign worker. Processing delays result from a number of factors that are beyond the control of USCIS, including extensive Federal Bureau of Investigation (FBI) name checks and retrogression of petition priority dates caused by over-subscription of the applicable visa categories. The solutions suggested by one commenter, however, such as mandatory processing times, automatic fee refunds, or automatic approval, would neither improve efficiency nor result in shorter processing time. The suggestion that delays result in refunds would merely cause more delays. Employers may use the premium processing service, if applicable, to obtain faster processing of certain employment-based petitions and applications, a process that may alleviate the commenters' concerns.

The national interest is not served and immigration laws are not complied with by automatically approving immigration benefits for persons solely as a result of the passage of time. Each applicant or petitioner must prove his or her eligibility for the benefit sought. While a backlog still exists, USCIS has achieved an average processing time for an Alien Employee Petition as of January 2007 of less than 135 days per case, which represents fifteen days faster than five years ago, but with a much higher current monthly volume. With the additional USCIS resources from this updated fee schedule, performance will be enhanced even further.

c. Multiple biometric data requests.

Many commenters pointed to the fact that applicants or petitioners must provide biometric data more than once. Some commenters considered the expiration of fingerprints submissions to be inefficient. Others suggested that it was inefficient for USCIS to again request fingerprints when they apply for sequential benefit applications. USCIS agrees that an applicant should not be required to provide biometric data multiple times for a single application. USCIS is developing the Biometrics Storage System (BSS) which will allow the re-use of fingerprints and, if an application or petition has not been adjudicated within the fifteen month validity period, USCIS will be able to simply re-submit the stored fingerprints to the FBI, without any involvement of the applicant or petitioner. See 72 FR 17172 (Apr. 6, 2007) (establishing a new system of records). Also, as a matter of policy, when an application remains pending, USCIS does not charge the applicant the biometric fee again because of a processing delay at USCIS.

In the revised fee structure, the biometric fee is not simply a fee for biometric collection or the USCIS cost of the applicant or petitioner appearing at an Application Support Center. The biometric fee also covers costs associated with the use of the collected biometrics for FBI and other background checks. Thus, an applicant will pay the biometric fee whenever he or she files another application that requires the collection, updating, or use of biometrics for background checks. At that point, USCIS can verify the identity of the applicant by comparing the newly collected biometrics with those previously submitted, providing an important security enhancement. USCIS believes that this new process may result in some decreases in costs which may offset the costs of background checks incorporated into the biometric fee, and has already factored this impact into the fee structure along with projected efficiency increases.

d. Petitions for aliens of extraordinary ability or performers.

USCIS received many comments requesting improved efficiency in the processing of visa petitions for aliens of extraordinary ability in science, art, education, business, or athletics, and their spouses and/or children (the O visa category), or aliens coming to the United States temporarily to perform at a specific athletic competition or as a member of a foreign-based entertainment group (the P visa category). Many O and P petitions are submitted on relatively short schedules, i.e. the individual/group is scheduled to

visit the United States in the near future for a specific event.

These commenters stated that lengthy and uncertain O and P visa processing periods complicated booking foreign artists for performances and requested the implementation of a thirty-day maximum processing period. This issue is not germane to this rule; however, because of the volume of comments received, a brief response is provided.

The USCIS receipt notice received by an O and P petitioner after filing states that the petition will be processed in 30–120 days, but that time is a standardized estimate for all O and P petitions for many types of performers and organizations. Still, USCIS does everything in its control to adjudicate these petitions within 60 days. In spite of this fact, cases may be delayed by a number of causes that are beyond USCIS control, most commonly a lack of response to USCIS inquiries by the sponsoring organization, labor unions and other representatives, and the prospective visa recipient. For planning purposes, current estimates of various visa classification processing times and processing dates are posted on the USCIS website.

USCIS recently published a final rule to permit petitioners to file O and P nonimmigrant petitions up to one year prior to the need for the alien's services. 72 FR 18856 (April 17, 2007). Although that rule will not resolve all of the commenters' concerns, the longer filing window will better assure O and P petitioners that they will receive a decision on their petitions in a timeframe that will allow them to secure the services of the O or P nonimmigrant when such services are needed. USCIS suggests, however, that the nature of the O and P visa classifications creates a need to carefully plan performances and book foreign entertainment acts. Fees collected after publication of this rule will be used to cover USCIS costs and will assist in more reliable and consistent adjudication of all applications and petitions, including O and P visa petitions.

e. Pre-screening applications and petitions for lawful permanent residence.

One commenter supported the recommendation of the USCIS Ombudsman to require a comprehensive prescreening of Applications to Register Permanent Residence or Adjust Status, Form I–485, prior to filing. Citizenship and Immigration Services Ombudsman, *Annual Report to Congress*, 50–55 (June 29, 2006) (Recommendation 27). Recognizing that adoption of a prescreening process would reduce revenues, the commenter posited that it would instead promote efficiency and integrity, and enhance security.

USCIS is committed to a process that handles cases efficiently and effectively, meeting all quality requirements in a way that protects the national security and public safety of the United States. USCIS cannot, however, agree with this recommendation at this time. The suggestion for ''up-front processing'' is very similar to a process that came to be known as ''front-desking''—a procedure followed by the INS in which employees were instructed to review certain applications in the presence of the applicant to correct facial deficiencies, incomplete responses or errors before accepting the application for filing, and not to accept those applications thought to be statutorily deficient. Front-desking effectively precluded administrative and judicial review of rejected applications because there was no formal denial to appeal—only a return of an uncorrectable document. *Reno* v. *Catholic Social Services*, 509 U.S. 43, 61–63 (1993). Legitimation of the concept of up-front processing would require a fundamental change in the regulations administered by USCIS and goes well beyond the scope of this rulemaking. USCIS will not adopt this proposal as a part of this rulemaking.

f. Transformation project and premium processing.

Some comments requested more information on transformation plans and how premium processing revenues will be spent. Others suggested that premium processing be expanded. Another commenter suggested that transformation from a paper to electronic process would create excessive costs and burdens that would create financial and paperwork barriers to citizenship.

As required by statute, premium processing revenues are deposited in the IEFA and will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers, and to broader investments in a new technology and business process platform to radically improve USCIS capabilities and service levels. INA Section 286(u), 8 U.S.C. 1356(u). USCIS has recognized that its existing technology has not kept pace with changing demands and additional requirements placed upon USCIS. Since the previous fee structure was retrospective and did not include funds for real investments to sustain and improve USCIS infrastructure, business choices have been limited to those that can be supported by existing technology or no technology.

The premium processing fee ($1,000) is statutorily authorized for employment based applications and petitions. USCIS cannot expand the premium processing fee or the applications and petitions available for premium processing beyond the statutory limitations.

USCIS plans to transform the current paper based process into an electronic adjudicative process. This transformation will allow USCIS to better detect and deter those who seek to do harm or violate the laws of the United States, while facilitating benefits processing for eligible, low-risk persons.

USCIS acknowledges that the transition from a paper-based to an electronic adjudication system carries with it certain burdens, but believes the benefits of the new process will significantly outweigh those costs. The new adjudicative process will enable USCIS to enhance national security, improve customer service, and increase efficiency by increasing its ability to share data with immigration partners, improving security by uniquely identifying individuals, improving system integrity by creating customer accounts, and providing a single worldwide case management system. Nonetheless, as some commenters pointed out, not all applicants will have access to the Internet or other electronic means of submission. For those individuals, paper submissions will remain an option.

g. Actions planned to improve efficiency.

USCIS believes that, while sustainability of its operations focused on continuous improvement is important, so is real and substantive near-term improvement. USCIS structured the revised fee schedule to allow it to commit to specific substantial improvements over the next two years.

USCIS is committed to substantial reductions in processing times by the end of FY 2008 for four key applications: (1) Application to Renew or Replace a Permanent Resident Card, Form I–90 (Application for LPR Card); (2) Application to Register Permanent Residence or Adjust Status, Form I–485 (Adjustment of Status Application); (3) Immigrant Petition for Alien Worker, Form I–140 (Alien Employee Petition), the petition for an employer to sponsor a foreign worker for permanent residence based on its job offer; and (4) Application for Naturalization, Form N–400 (Naturalization Application), the petition to become a United States Citizen through naturalization. These four applications and petitions represent almost one-third of the USCIS total workload. By the end of FY 2008,

USCIS plans to reduce processing times for each of these cases by two months, from six months to four months (naturalization processing will be reduced from seven months to five months when the ceremony at which a person takes the oath of allegiance is included as part of the process). Thus, applicants and petitioners will see a significant improvement in the first full fiscal year following these fee adjustments. Further, as also indicated in the proposed rule, USCIS is committed to a twenty-percent average reduction in case processing times by the end of FY 2009, which will extend improvements in processing times and service delivery across the spectrum of applications and petitions.

The proposed fee structure commits USCIS to real improvements as it is not built simply on today's productivity rates, but on anticipated increases in productivity (four percent for the Adjustment of Status Application, and two percent for all other products). USCIS is accountable for these productivity increases in order for fees to support operations as intended.

Another commenter suggested that hiring more permanent employees would improve USCIS efficiency. USCIS agrees with the commenter that sufficient staffing is directly related to the ability to collect sufficient fees for service as explained in the proposed rule and this final rule. As presented in the President's FY 2008 Budget, USCIS plans to add 1,004 Adjudication Officers and support staff. However, twenty percent of the new staff will be other than permanent employees. Most of that staff will handle application and petition volume surges, a critical resource to ensure that the backlog does not increase due to sudden and unpredictable workload increases. However, the comment suggests no regulatory changes. Thus, no changes are made to the final rule.

One commenter questioned how quickly USCIS will be able to implement all of the resources outlined in the additional resource requirements. The commenter also questioned whether USCIS took into consideration ongoing expenses versus one-time expenses. USCIS has factored into the fee schedule the appropriate start up costs. USCIS did differentiate one-time costs versus recurring costs in its fee calculations. For example, one-time costs such as background investigations and computer equipment for new hires were included in the FY 2008 costs, but not in the FY 2009 costs. These calculations are accurately identified in the fee review supporting documentation.

4. Increases Relative to Time

Some comments suggested that some fees were excessive for certain applications and petitions relative to the time it takes to process the application or petition. As mentioned above and in the proposed rule, the primary basis of the USCIS fee model is the administrative complexity, which is the amount of time that it takes to process a particular kind of application or petition (identified as ''Make Determination'' activity in the proposed rule). The calculation also factors in other direct costs, such as the cost of manufacturing and delivering a document when that is part of the processing of a particular benefit.

In addition to these costs, the fee calculation model factors in the full costs of USCIS operations, including services provided to other applicants and petitioners at no charge, overhead costs (e.g., office rent, equipment, and supplies) associated with the adjudication of the application or petition, and other processing costs. These latter costs include responding to inquiries from the public (''Inform the Public'' activity), application and petition data capture and fee receipting (''Intake'' activity), conducting background checks (''Conduct Interagency Border Inspection System Checks'' activity), the acquisition and creation of files (''Review Records'' activity), preventing and detecting fraud (''Fraud Prevention and Detection'' activity), and, when applicable, producing and distributing secure cards (''Issue Document'' activity) and electronically capturing applicants' fingerprints, photographs, and signatures (''Capture Biometrics'' activity). In total, all application and petition fees include a total of $72 in ''surcharges'' to recover asylum and refugee costs, and fee waiver and exemption costs.

5. Increases Relative to Other Standards

Many commenters suggested that the fee average or weighted average fee increases were out of line with, for example, the Social Security Administration's (SSA) 2007 basic cost of living increase, the increase in the Gross Domestic Product (GDP), or the federal General Schedule salary increase. USCIS appreciates the concerns expressed, but these external indicators of costs are not comparable with USCIS' costs. For example, SSA's basic cost of living increase is a benefit increase tied to inflation, whereas the USCIS fees recover all of the costs of operating USCIS, including enhancements required to meet congressional mandates, improve efficiency, detect fraud, secure the immigration system, and to consolidate elements such as federal salary increases into base costs. The real GDP or ''real gross domestic product,'' on the other hand, is an estimate of the output of goods and services produced by labor and property located in the United States by the United States Department of Commerce Bureau of Economic Analysis. GDP bears no relation to the cost models that must generate the fees to be charged by USCIS.

Many commenters stated that the increase in the fee for the Application for Replacement Naturalization/Citizenship Document, Form N–565, from $220 to $380, was unreasonable when compared with replacement of other documentation. Most of these commenters compared the fee for replacing a citizenship certificate with replacing a Social Security card, which the Social Security Administration provides for free, or replacing state documents (e.g. driver's licenses) that many states provide for a nominal charge.

Replacement of a social security card, driver's license, voter registration card, or passport is substantially different from replacement of a certificate of citizenship. USCIS incurs substantial costs in determining the validity of the naturalization for which the certificate was issued before it can issue a new certificate. As stated in the proposed rule and above, this fee schedule is based on the relative complexity of adjudication of a benefit application and reflects the average relative cost of adjudication of all such applications. The fees charged for replacing secure documents reflect the full costs incurred by USCIS in replacing those documents. Regardless of the type of change requested, USCIS must obtain the original records and issue a new certificate after the appropriate review and decisions. Charging $380 for adjudication of Form N–565 for an infant may recover more fees than that specific adjudication may require, however, $380 fails to recover the resources expended to determine the validity of the more complicated applications such as in the case of an adult who requires significant background investigation. Therefore, the Form N–565 fee was not adjusted from what was proposed.

Other comments stated that some fees should reflect validity periods with lower fees for benefits with shorter validity periods. This argument is similar to that advanced by many who advocated higher fees—that the fees should not be based just on costs, but

on the real or perceived value of the benefit. USCIS' methodology is based on the complexity of the adjudication, not the validity period. USCIS establishes maximum allowable time periods that may pass between its approval of a benefit and the applicant's receipt of the benefit based on the type of case and how passage of time influences the need for updates in the information used to make the determination. The approval validity period is not designed to generate revenue through unnecessary repeat filings. USCIS believes that the current methodology is fair and complies with Federal fee guidelines. Decreasing the fee for applications for benefits with shorter validity would only shift costs to other immigration benefit applications and petitions based on considerations that are not applicable. The comment will not be adopted.

6. Grandfathering

Some comments recommended phasing in the fee increase over a period of years, or fixing fees at current levels for those who already applied for one or more immigration benefits in the past, effectively grandfathering fees for those who are already in the USCIS system. Deferring fee increases would directly result in service delays. In addition, setting fees lower for any class of applicants or petitioners would merely transfer costs to other applicants. Thus, USCIS has not incorporated these recommendations.

7. Budget Decisions Necessary To Administer Immigration Benefits

Many comments highlighted a critical aspect of the fee structure—operations must be sustainable. The real cost of processing a type of application or petition is more than the discrete cost of processing a particular individual case today. It includes the cost of sustaining operations and making investments to continually improve service delivery and performance. The proposed fee structure is designed to meet performance standards and make continuous improvements through investments in training to ensure a high performance workforce, facilities to provide services that are more accessible to our customers, systems to support operations and performance, and resources to improve quality and performance management. These goals are consistent with the principles of Office of Management and Budget (OMB) Circular A–25.

8. Reorganization

Another commenter suggested that efficiency could be improved by reorganizing USCIS in accordance with the recommendations of the USCIS Ombudsman. USCIS has recently reorganized its functions and expects this reorganization to provide greater efficiency once it has gained traction. *See* 71 FR 67623. Those expectations were incorporated into the proposed rule and this final rule.

C. Alternative Sources of Funding

Many comments did not dispute the methodology and costs, but asserted that applicants and petitioners simply should not be required to bear the burden of these fee increases. Many pointed to the benefits of immigration and assimilation and argued that because the United States benefits as a whole from immigration, as a matter of public policy immigrants should not bear the entire cost of processing. Many asserted that USCIS should find ways to keep fees down, even if it means operating at a deficit. Others suggested substituting appropriated monies for user fees to offset particular fees or activities or subsidize general USCIS operations.

1. Appropriated Funds

Many comments recommended that USCIS seek appropriated funds to close funding gaps, meaning that taxpayers should subsidize particular applications and petitions, certain processes, activities not directly related to the adjudication of the particular kind of application or petition, or fees in general. Some highlighted the public good and positive impact resulting from immigration, naturalization, or certain procedures (i.e., background checks) and argued that the public good merited the use of tax dollars to offset costs. Many comments suggested that appropriations be used to either subsidize specific benefit application or petition fees or all fees in general. Some comments suggested that fees should be the last recourse for funding immigration services; that is, USCIS should be required to have exhausted all possible means of seeking appropriated funds before imposing fee increases. One commenter faulted USCIS for not engaging Congress to cooperatively work on this issue. Others suggested funds be appropriated for discrete purposes to offset the cost of a particular activity associated with case processing or overall management of USCIS.

Other comments point out that section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes the recovery of the full cost of providing immigration and naturalization services, including services provided without charge to many applicants. These comments point out, however, that section 286(m) does not mandate full cost recovery, and that USCIS still has the option of seeking appropriations and choosing to recover less than full cost through user fees. Some commenters urged support for specific legislation that would alter the fee development process or affect this specific fee review process.

Finally, one commenter suggested that USCIS use appropriated funds to fund unusual or atypical expenses from its fee calculation. The commenter suggested that these infrastructure costs represent an ''investment'' that should not be funded by current immigration and naturalization applicants and must not be included in the fee calculation.

These comments go beyond the scope of the regulation and raise questions of whether Congress should alter the immigration laws of the United States or appropriate general funds for USCIS. In effect, these comments suggest that USCIS should take other actions outside the rulemaking and the authorization for this rulemaking under INA section 286(m), 8 U.S.C. 1356(m).

Law and policy have long supported the proposition that the costs of providing immigration benefits should be borne by those applying for those benefits. Thus, in this final rule, USCIS is adopting a fee schedule to recover its costs through user fees. While it is true that Congress has enacted intermittent appropriations to subsidize the operations of USCIS, the President's budget for FY 2008 does not request such an appropriated subsidy, except specific funds for expansion of an Employment Eligibility Verification program. Even if an appropriation were to be requested, receipt of sufficient funds (without adjusting the fee schedule) to cover the costs of USCIS operations may be doubtful. USCIS must fund the services it provides through the legal means at its disposal. Deferring the recovery of full costs while USCIS explores other funding options will delay service delivery to applicants and petitioners.

2. Finding Other Revenue Sources

Some comments suggested funding USCIS through fines assessed against employers who hire aliens who are not authorized to work in the United States. Other comments suggested a variation on the methodology, such as charging employers more than individuals or charging additional fees at the time of naturalization.

USCIS is statutorily barred from using fines assessed against employers. Unless specified in law, all fines and penalties under the immigration laws become miscellaneous United States Treasury

receipts and are deposited into the general fund, not the IEFA. INA section 286(c), 8 U.S.C. 1356(c). Those additional sources of USCIS revenue that are authorized, such as the DHS share of certain supplemental fees collected under section 286(v) of the INA, 8 U.S.C. 1356(v), have been taken into account in USCIS budgeting and fee setting.

USCIS believes that the methodology used to develop these fees—a methodology based on the complexity of the specific application or petition—is the most appropriate process to equitably allocate costs and provide long-term stable and reliable funding. Part of USCIS' funding problem has been reliance on temporary funding sources, including appropriated funding. This new fee schedule will establish a more stable source of funding. As the number of applications and petitions increases, USCIS will be better able to respond to increasing workload changes and will no longer be compelled to sacrifice customer service or rely on unreliable funding sources.

D. Comments on Specific Benefit Application and Petition Fees

Many comments that suggested that USCIS seek appropriated funds or other subsidies, or other means to reduce fees from the proposed levels, also emphasized issues and impacts related to particular applications and petitions. The fee development methodology is sensitive to the costs of adjudicating each type of application or petition based on the complexity of adjudicating it.

1. Naturalization Application

The fee for the Naturalization Application generated a large number of comments from a wide spectrum of commenters. The proposed rule would raise this fee from $400 to $675, including the required biometrics fee, or a 69 percent increase. Many comments highlighted the public interest in promoting citizenship and recommended reducing this fee.

USCIS understands the sentiment expressed by the commenters that becoming a citizen of the United States is an honor to be cherished. USCIS disagrees with the commenters who suggested that the proposed fee increase is inconsistent with our tradition of welcoming and integrating immigrants and that increasing the fee would send the wrong message to intending citizens.

The fee for a Naturalization Application is established at $595 in this final rule and properly reflects the intensive scrutiny with which a request for such an honor should be reviewed. Naturalization applicants who are initially found eligible must be examined under oath to assure compliance with the many requirements for citizenship under the INA including competency in English, knowledge and understanding of United States Government and history, physical presence and maintenance of resident status in the United States, and facts and conduct reflecting their moral character and attachment to the United States Constitution and law. 8 U.S.C. 1401 *et seq.*

In adjudicating some naturalization applications, USCIS adjudicators must resolve complex subsidiary applications for certain exemptions, such as the Application to Preserve Residence for Naturalization Purposes, Form N–470, or the Medical Certification for Disability Exceptions, Form N–648 (which is processed and adjudicated without charge). Further, criminal and national security record checks are required for naturalization applications and may require the involvement of numerous USCIS personnel. In addition, the naturalization adjudication process may require multiple interviews, and solicitation and consideration of additional evidence bearing on eligibility. Finally, in the event of an adverse decision on the application or petition, the applicant is entitled to request a new hearing by a different adjudicator. All of these factors are reflected in the fee charged to recover the cost of adjudication.

Two factors in this final rule mitigate the Naturalization Application fee increase. First, the final rule maintains the current USCIS policy of permitting naturalization applicants to request an individual fee waiver. In determining inability to pay, USCIS officers consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. For those applicants not granted a fee waiver, USCIS will charge a fee of $595 for processing naturalization applications. Additionally, the cost of fingerprints has been reduced slightly, resulting in a decreased overall cost for naturalization applicants. Accordingly, USCIS has determined that the effort and resources expended to process Naturalization Applications justifies this level of fee increase.

2. Application To Register Permanent Residence or Adjust Status

Many comments emphasized the overall size of the proposed increase for the Adjustment of Status Application fee from $325 to $905, or 178 percent. Most of the proposed fee increase for the Form I–485 was driven by the packaging or ''bundling'' of related benefits with no separate fee. As indicated in the proposed rule, factoring in separate fees, applicants typically pay for additional services related to the Form I–485 for which they will no longer pay separately. In this rule, after consolidating the fees for the Adjustment of Status Application and the requests for interim benefits that previously required additional fees, the increase in the fee from $865 to $1,010 (17%), including the biometric fee, is significantly below the average increase for all fees.

A few comments suggested that incorporating the fee for the Application for Employment Authorization, Form I–765, (Application for EAD) and the fee for the Application for Travel Document, Form I–131, (Application for Travel Document) into the Adjustment of Status Application should only be an option. USCIS issues an Employment Authorization Document (EAD) to the alien after it approves an Application for Employment Authorization. An alien submits an Application for Travel Document to apply for a travel document, reentry permit, refugee travel document, or advance parole. EAD and travel documents are commonly referred to as ''interim benefits.''

These commenters suggested that children may not need or desire travel documents or work authorization, so the fee for an Adjustment of Status Application should be consequently reduced for a child or a family. Other comments suggested that, like refugees, asylees should not be required to pay the portion of the new Adjustment of Status Application fee attributable to the interim benefits, because eligibility to work is incident to their status. Finally, several commenters suggested that USCIS apply the fee consolidation for the Adjustment of Status Application, Application for EAD, and Application for Travel Document to all currently pending Adjustment of Status Applications.

USCIS has made no adjustment in this final rule as a result of these comments. USCIS determined that a change in the fee schedule was not justified because a type of applicant mentioned by the commenters may not need or want interim benefits. Neither does this rule adopt the suggestion to process Applications for EADs or Applications for Travel Documents for currently pending Adjustment of Status Applications without fee. USCIS records indicate that most applicants who

initially choose not to apply for an EAD or travel documents soon do so because they find that they need interim benefits almost immediately. As for asylees and refugees, asylees are authorized to work, but USCIS records indicate that most asylees and refugees obtain an EAD to provide to employers as readily accepted proof that they are authorized to work in the United States. The fees collected by USCIS for EAD Applications fund the costs incurred by USCIS for issuing EADs. USCIS incurs costs for adjudicating the Application for EAD which is a different issue from an asylee's authorization to work incident to asylee status. Further, although refugees are not required to submit a fee for their initial Adjustment of Status Application, they are required to pay the fee for an Application for EAD or for the Application for Travel Document to request a refugee travel document. Providing multiple fee options based on who typically requests interim benefits, when records indicate that the vast majority of applicants do request interim benefits, would be too complicated and costly for USCIS to administer. Applicants with a pending Adjustment of Status Application who did not pay a fee that incorporates the cost of an Application for EAD and an Application for Travel Document must continue to file separate interim benefit applications with the appropriate fee for each service.

A number of comments pointed out that the packaging of these services and the fee increase means that the total fees a family will pay for concurrently filed Adjustment of Status Applications will increase substantially, and argued for some form of family cap on the total fee to be collected. These commenters pointed out that the child fee level under the fee schedule was almost one-third lower than the adult fee, but the $100 difference under the proposed fees represents only an eleven percent differential between an adult's and a child's Adjustment of Status Application fees. These comments added that this effect exacerbated the impact of the fee changes on families. Other commenters were concerned that, while refugees are charged no fee for their Adjustment of Status Applications, the proposed rule provides that asylees must pay a fee for an Adjustment of Status Application and suggested that this treatment was disparate.

USCIS considered the suggestion that it institute a maximum fee for a family where several members submit simultaneous Adjustment of Status Applications (family cap). USCIS analyzed a number of scenarios to determine at what level a family cap would not result in a significant transfer of the direct costs for adjudicating Adjustment of Status Applications for entire large families to individuals or smaller families. USCIS also weighed whether or not to transfer the costs of adjudicating Adjustment of Status Applications for large families to only other adjustment of status applicants or to all other benefit applications. Unfortunately, USCIS was unable to determine the size of the family at which it was no more administratively burdensome to process an Adjustment of Status Application for an additional relative when processing multiple, simultaneous Adjustment of Status Applications from family members. In the end, USCIS determined that the policy or humanitarian considerations inherent in the decisions made in this final rule to allow additional fee waivers is not sufficiently prevalent in the case of family Adjustment of Status Applications to warrant a family cap, absent such data on the requisite burden based on size. Thus, USCIS then turned to consideration of the variation in Adjustment of Status Application fees based on the applicant's age.

As pointed out by some comments, the fee for the Adjustment of Status Application was $325 for aliens fourteen years of age or older, but for aliens under fourteen years of age, the fee was $225. This amounted to a 31 percent difference in the base filing fee. In response to these comments, USCIS evaluated the difference in actual processing time and costs associated with the ''Make Determination'' activity for Adjustment of Status Applications. While the proposed fee for an Adjustment of Status Application was based on the overall cost of processing the average application, regardless of the applicant's age, the large majority of Adjustment of Status Applications are filed by persons fourteen or older. USCIS conducted an analysis of Adjustment of Status Applications submitted concurrently as part of an application from a family. For the application to be filed concurrently, the child must be a derivative applicant of the adult or the child's status must be based on the same legal authority as the adult's. This analysis found that there is a 35 percent difference in the average time it takes to process an Adjustment of Status Application filed by someone under fourteen years of age versus the time it takes to process a case filed by someone age fourteen or older. This calculation was consistent with the methodology employed by the proposed rule in that an identifiable adjudication was segregated and the relative complexity of processing the benefit for a subset of applicants was determined. Applying this difference to the fee model reduces the fee for an Adjustment of Status Application for a family member under age fourteen from $805 to $600, and adjusts the fee for family members age fourteen and older from $905 to $930. Since the fee will drop for every concurrently-filed adjustment of status application for someone under 14, families with children who all file concurrently will see a drop in their collective adjustment fee. For example, a family of two adults and one child will see their total adjustment application fees drop by $155 relative to what they would have paid without this change, and a family with two adults and two children will see their collective fees drop by $360. A family with two adults and four children will see their fees drop by $770.

USCIS explored establishing a child discount in other immigration and naturalization benefit areas and has determined that a discount for adjudication of a child is only appropriate in the case of an Adjustment of Status Application. The Adjustment of Status Application requires adjudication of a distinct and separate application for a child, although it can be submitted simultaneously with other family members. Other benefits that require submission of a separate application from family members, but allow the family members to submit them concurrently for processing are distinguishable. For example, no fee is charged for the Registration for Classification as Refugee, I–590, and the fee for the Application for Temporary Protected Status, Form I–821, is statutorily capped at $50 per applicant, which is substantially below its adjudication costs. Similarly, besides children, there are no other subgroups of applicants for adjustment of status who possess qualities that would provide for segregation of relative adjudicative complexity that would provide sufficient data for a separate fee calculation.

Likewise, the maximum amount payable by a family was removed from the fee proposed for Application to Adjust Status from Temporary to Permanent Resident (under Section 245A of Pub. L. 99–603), Form I–698, and the Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, Form I–687. That change was made mainly because Immigration Reform and Control Act of 1986 (Pub. L. 99–603, November 6, 1986) requires an applicant under that

Act to have entered the United States before January 1, 1982, which would exclude anyone currently under the age of 18. Further, the family cap for fees charged filing Form I–698 and Form I–687 was a policy established by INS for legalization and established at three times the fee for an individual. As explained earlier, a family cap that is not based on adjudicative complexity does not comport with the methods used for establishing the fee schedule in this rule. Therefore, beyond reducing Adjustment of Status Application fees for children, USCIS will not provide any discount for families based on size, and USCIS has decided to base Adjustment of Status Application fees on the direct costs associated with that service.

With regard to the different treatment for refugees and asylees, the exception for a fee for refugees is based on the requirement that a refugee must apply for adjustment of status within one year of admission as a refugee. INA section 209(a), 8 U.S.C. 1159(a). Further, while refugees have been affirmatively invited by the United States Government to come to the United States for permanent resettlement, asylees have sought admission of their own accord and requested to be allowed to stay. While USCIS agrees that both asylees and refugees should receive full protection from persecution, it is a reasonable policy choice to be more generous in awarding immigration benefits to those who are invited. Nonetheless, in response to comments on this subject, USCIS has decided to allow asylees to request a waiver of the Adjustment of Status Application fee on an individual basis. Section III.E addresses changes in fee waivers in more detail below.

3. Employment Authorization for Students

Many educational institutions and their representatives submitted nearly verbatim comments on the proposed fee increase for an Application for EAD. These commenters expressed significant concerns about the size of the fee and its effect on the limited financial capability of most international students in F visa status and their ability to apply for work authorization when they choose to participate in the Optional Practical Training (OPT) program. These comments noted that international students on F–1 visas are limited to 20 hours per week of on-campus employment and the money to pay the Application for EAD fee will curtail their ability to buy food and pay rent. Similarly, these same commenters, for the most part, expressed general concerns about the immigration benefit application expenses for international students and their family members, who typically are of limited means.

For international students, F–1 status allows a student to remain in the United States as long as they are a properly registered full-time student. To maintain full-time status, a student must take at least four courses per semester at the undergraduate level, and depending on the academic program, three or four courses per semester at the graduate level. Also, under F–1 status, a student may work part-time in an on-campus job and in a ''practical training'' job directly related to the student's field of study for twelve months during or after the completion of studies. The OPT program mentioned by the commenters grants temporary employment authorization to provide F–1 students with an opportunity to apply knowledge gained in the classroom to a practical work experience off campus. To be eligible for OPT, a student must have been in full time student status for at least one full academic year preceding the submission of their application for OPT, be maintaining valid F–1 status at the time of the application, and intend to work in a position directly related to his or her major field of study.

The United States places a very high value on attracting international students and scholars to this country. The contributions to the academic experience for all students provided by the existence of a diverse international student body are invaluable. The resources devoted to delivering immigration benefits to deserving students show the importance of this goal to USCIS. USCIS also understands that international students already face significant hurdles, including financial hurdles, which is why the fee structure consolidated fees where consolidation made sense, and kept fees to a minimum. Nonetheless, substantial resources are expended by USCIS for adjudication of the student's eligibility for employment documents and the fee for an Application for EAD was established based on those needs. Further, while USCIS acknowledges that the salaries provided by OPT are helpful, the emphasis of OPT is on training students in their fields of study, not as a source of income. To that end, the $340 cost of requesting an Application for EAD is a very small portion of the total expenses incurred by an alien pursuing studies in the United States. EAD applicants may request an individual fee waiver based on inability to pay. For Applications for EAD that are not granted a fee waiver, USCIS will charge a fee of $340 for processing based on the effort and resources expended to process this benefit.

4. Application for Advance Processing of Orphan Petition

Many comments focused specifically on the fees for a Petition to Classify Orphan as Immediate Relative, Form I–600, and an Application for Advance Processing of Orphan Petition, Form I–600A. Several comments suggested that USCIS should reduce the fee and offer fee waivers for orphan petitions. These commenters effectively request that USCIS shift the costs of this program to other immigration benefit applications and petitions.

Adjudicating orphan petitions involves some of the most complex decision-making within immigration services because adjudication of Petitions to Classify Orphan as Immediate Relative and Applications for Advance Processing of Orphan Petition requires knowledge of many state adoption regulations and statutes and foreign country adoption requirements. Each petition must be accompanied by a home study, background checks, and evidence that must be carefully examined. Approval of parents as suitable to adopt is time sensitive as a result of the potential changes in a household that may impact the suitability of the home for an adopted orphan, such as loss of a job or divorce. Such changes often prevent reconsideration of the parents' petition. As a result of this approval expiration period, currently set as eighteen months, prospective adoptive parents must submit a new petition and all supporting documents if they wish to continue with the adoption process if they have not been matched with a child. USCIS sometimes works with a case for months, involving frequent contact with adoption agencies, social workers, and prospective adoptive parents. Finally, international orphan adoption adjudications require an investigation and information verification, and may require travel. This fee increase will allow USCIS to automate case management of adoption cases, further reducing any real or perceived delays in the manual, paper-based process currently in place.

Orphan petitioners must attest that the beneficiary will not become a public charge in order to be approved as a suitable adoptive parent. Further, the orphan petition fee is a small part of what a United States citizen petitioner chooses to accept as part of the overall process and cost of adopting a child from overseas and raising that child. The financial circumstances required to be eligible for this benefit directly contradict the rationale for shifting costs related to these applications to others,

or for offering a waiver of the fee because of inability to pay.

A significant number of comments suggested that USCIS mitigate the cost by extending the validity of approved orphan petitions and the results of background checks. Commenters complained that processing in the country from which the child comes often takes longer than the current approval validity, which creates re-work and additional fees. The length of the validity of the approval of any petitioner or applicant for a benefit was not mentioned in the proposed rule and cannot be amended by this final rule. Thus, these comments are beyond the scope of this rule.

The final rule provides, as does the current USCIS fee schedule, that when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required. No fee is collected on additional siblings because USCIS determined that processing efficiencies provided by the ability to adjudicate two siblings simultaneously did not justify an additional fee. However, in the case of multi-child simultaneous petitions when the orphans are not siblings, USCIS requires separate fees for each child because of the processing requirements of determining eligibility of each child. In addition, if a filing fee is paid at the time of filing an Application for Advance Processing of Orphan Petition, a fee is not required again to file a Petition to Classify Orphan as Immediate Relative.

Since a large number of commenters ardently mentioned this issue as part of their comments, USCIS has decided to allow a prospective adoptive parent to receive one extension of the approval of the Application for Advance Processing of Orphan Petition at no charge. Prospective adoptive parents, who have not found a suitable child for adoption as evidenced by their failure to submit a Petition to Classify Orphan as Immediate Relative after approval of their Application for Advance Processing of Orphan Petition, will be allowed to request one extension of the approval without charge, including the biometric fee. This final rule does not change the proposed petition fee of $670. The request from the applicant for an extension of the approval must be in writing and received by USCIS prior to the expiration date of approval indicated on the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I–171H. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application. This final rule also provides that no biometric service fee will be charged for an update of the biometrics required for an extension of an approved Application for Advance Processing of Orphan Petition. The same limitations apply.

USCIS determined that the costs of processing an initial extension were minimal when it results only from the parents' inability to match with a child within the first approval period and the update process begins before expiration actually occurs. The full fee will be charged, however, for adjudicating a new application when a child has not been matched after the first extension (the second approval period). Because of the length of time involved (three years) and the need for substantial updates, the second update often involves the same complexity as the initial application. Similarly, when the approval expires and a new application is submitted as a result of the first child selected by the prospective adoptive parents not being adopted (denial of Petition to Classify Orphan as Immediate Relative, Form I–600), the resources expended to adjudicate the first Petition to Classify Orphan as Immediate Relative require a new fee for beginning the process anew for a new orphan from the same country or a different foreign country as the first application.

5. Entrepreneurs

One commenter, representing an association of affected individuals, claimed that the fee for the Immigrant Petition by Alien Entrepreneur, Form I–526, is incorrect because this benefit is only adjudicated at USCIS service centers, not at USCIS local offices as stated in the proposed rule. In addition, the commenter stated that USCIS has not shown why the percentage increase for the Immigrant Petition by Alien Entrepreneur (for EB–5 status) filing fees should be higher than others, especially when compared to the Petition by Entrepreneur to Remove Conditions, Form I–829. The commenter stated that petitions to remove conditions generally should take less time to adjudicate the original entrepreneur petition, which has a lower proposed fee. USCIS recognizes that the Immigrant Petition by Alien Entrepreneur is indeed adjudicated at local offices. USCIS service centers will refer certain cases to local offices for interview, however, the volumes of Immigrant Petition by Alien Entrepreneur filings referred are relatively small (three percent), and the resulting cost impact is minimal.

The Immigrant Petition by Alien Entrepreneur and the Petition by Entrepreneur to Remove Conditions are two of the more labor intensive petitions that USCIS processes, as evidenced by the high completion rates in the proposed rule. As stated in the proposed rule, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. Although the completion rates for the entrepreneur petition and the petition to remove conditions are approximately the same, the fees are substantially different because the costs are being spread across a smaller number of petitions (600 for immigrant entrepreneur petitions compared to 45 for Petitions By Entrepreneur to Remove Conditions), resulting in a higher unit cost for the petition to remove conditions. USCIS explained this reasoning in the proposed rule and it remains valid.

6. Effect on Availability of Skilled Workers

Some commenters specifically argued that an increase in fees will deter employers from seeking skilled workers from outside the United States to fill gaps in the workforce, adversely affecting the competitiveness of the United States. USCIS disagrees with the notion that an increase in fees will deter employers from seeking skilled workers for employment in the United States. There is no evidence suggesting that fee increases deter skilled workers from coming to the United States, as these comments suggested. In addition, this rule does not require an individual alien to pay his own petition fees since the fees for employment-based visa petitions are generally paid by the firms hiring an alien for a position. Moreover, in most employment-based visa categories, the demand for immigrants greatly exceeds the maximum number of visas permitted each year under the INA. For example, applications for H–1B visas exceeded the FY 2007 statutory cap on the first day that applications were accepted.

USCIS expects substantial demand for these visas to continue following the implementation of this rule. Similarly, there is no evidence suggesting a direct correlation between a fee increase of this magnitude for immigration benefits and illegal immigration, as some comments have suggested.

One commenter, representing an association of agricultural employers, claimed that the proposed fee for the Nonimmigrant Worker Petition is unfair because the cost to adjudicate this benefit varies greatly depending on the type of petitioner. The commenter suggested that H–2A employers are subsidizing the other, more complicated petitions of this form type. USCIS

recognizes that some adjudications within a particular form type are more expensive than others, and that the more complex petitions are subsidized by the simpler ones since the fee is calculated as an average. While USCIS understands the position of this commenter, it would be far too complex and expensive to administer a fee schedule based on the type of applicant or petitioner within a particular benefit. USCIS disagrees with this recommendation as it would further increase fees to recover the additional costs necessary to administer this change.

E. Fee Waivers and Exemptions

A number of comments focused on applicants or petitioners who would not be required to pay a filing fee for immigration benefits, relating to fee exemptions for classes of applicants or petitioners and requests for fee waivers due to inability to pay, as set forth in 8 CFR 103.7(c). Some comments argued that class fee exemptions and fee waivers should be further limited because they simply transfer costs to other applicants or petitioners. Others argued that fee waivers should be granted on a far wider basis. In response to comments, USCIS reconsidered the fee waiver provisions of the proposed rule.

A fee waiver based on inability to pay requires that other applicants or petitioners pay for the same service and for a portion of the fee being waived for that applicant or petitioner. Fee waivers represent approximately one percent of the total applications and petitions filed with USCIS each year.

Many comments implied that waiving fees in such a small percentage of cases suggests that the current fee waiver policy is far too stringent, and should be liberalized rather than further restricted. However, while the number of fee waivers USCIS grants represents a small percentage of total filings, USCIS has historically granted most of the fee waiver requests received. Another reason why the number of fee waivers may be seen by some as low is that individual fee waivers are granted in addition to fee exemptions granted to certain classes of individuals. Taken together, on a transactional basis, USCIS does not collect a fee in over seven percent of the cases received. Excluding business petitions to bring in foreign workers, nonimmigrant matters where the aliens must be able to support themselves to be eligible for status, and cases involving international travel, fee waivers represent over eight percent of the remaining workload. Given the complexity of asylum and refugee processing, from a workload perspective, fee waivers represent well over ten percent of the remaining effort.

In addition, the application fee for Temporary Protected Status (TPS) is limited by statute to $50. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). USCIS has historically waived the filing fee for TPS status for aliens unable to pay even this statutorily capped fee. 8 CFR 244.20.

1. Victims and Asylee Adjustment of Status Applications

USCIS proposed to exempt certain classes of aliens from paying a filing fee where it believes that the incidence of fee waivers due to inability to pay would be very high. In the proposed rule, USCIS proposed to expand the class fee exemptions to three small volume programs: Victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners. *See* INA sections 101(a)(15)(T) or (U), 8 U.S.C. 1101(a)(15)(T) and (U), and Public Law 109–162, secs. 811–817, 119 Stat. 2960, 3057 (Jan. 5, 2006). Those programs involve the personal well being of a few applicants and petitioners, and the decision to waive these fees reflects the humanitarian purposes of the authorizing statutes. The final rule maintains this blanket fee exemption because it is consistent with the legislative intent to assist persons in these circumstances. Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.

After reviewing the potential numbers of such applicants, USCIS has decided to allow these classes of aliens to request a fee waiver for when filing an Adjustment of Status Application. USCIS has made this determination for all of the reasons stated above, but tempered by the fact that an application to adjust status cannot be filed for a significant time after the alien has been granted T, or U status. Accordingly, this rule provides that a Form I–485 may be subject to a fee waiver when the person's eligibility for adjustment of status stems from asylum status, T status (victims of human trafficking), U status (victims of violent crime who assist in the prosecution), self petitioners under the Violence Against Women Act, or where by law the person otherwise is not required to demonstrate that he or she will not become a public charge, including but not limited to, Adjustment of Status Applications for Special Immigrant—Juveniles, or based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act, and the Nicaraguan Adjustment and Central American Relief Act. This final rule does not expand fee waiver eligibility further in adjustment of status cases. The changes made to the fee waiver and exemption eligibility criteria did increase fee waiver and exemption costs somewhat, but this had no impact on the resulting fee schedule given the insignificant volume numbers associated with the affected applications and petitions.

2. Special Immigrant—Juvenile

A number of commenters suggested that ''Special Immigrant—Juveniles'' also should be exempt from certain fees. A ''Special Immigrant—Juvenile'' is an immigrant under the age of 21, unmarried, who is a ward of a court in the United States (for the most part State courts) or eligible for long-term foster care or in custody of a state agency, and judicial proceedings have determined that it would not be in that Special Immigrant—Juvenile's best interests to be returned to his or her home country.

USCIS has determined that a fee exemption for this petition would be consistent with the exemptions granted for other classes of aliens and the humanitarian purpose of the statute. Therefore, the final rule exempts ''Special Immigrant—Juveniles'' from the fee for submitting a Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360. This fee exemption is a change from the proposed rule in addition to the change allowing a Special Immigrant—Juvenile to apply for an individual waiver of the fee for an Adjustment of Status Application.

3. Biometric Fee

Numerous comments suggested that the biometric fee was a burden for those aliens who could not afford it. In response, USCIS conducted an analysis of the costs to USCIS if such waivers were allowed. As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.

To analyze this issue, USCIS determined the total number of requests for waivers received in FY 2006, the number of fee waivers approved, and the number approved that were for applications where biometrics were required. USCIS determined that, had the biometric fee been waived for those

applicants or petitioners whose waiver request for the underlying application or petition was approved, the associated costs for collecting the biometrics spread across all paying applicants would have added only one dollar to the biometric collection fee. Because all fees are rounded to the nearest $5 increment, the model showed that allowing a fee waiver for the biometric fee would result in no increase. Therefore, USCIS decided to accept the commenters' suggestion. This final rule provides discretion to USCIS officials to waive the biometric fee, following the same general guidelines used to consider all other requests for fee waivers such as financial hardship. Beyond these limited programs, and those for asylees and refugees, USCIS has decided not to shift the costs of processing any other specific immigration benefit applications and petitions to others.

F. Authority To Set and Collect Fees

Some comments suggested that the proposed rule exceeded USCIS' statutory authority to collect fees. Some comments suggested that administrative and overhead costs were not related to the provision of services and should be excluded. Other comments suggested that enforcement costs should be excluded from the fees, while others posited that all of the enforcement costs of immigration and law enforcement agencies should be recovered by fees. Underlying these comments is the issue of compliance with the authorizing statute and internal Executive Branch guidance. On the other hand, one commenter particularly noted that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so. These comments raise the issue of the general structure of the fee account, and whether user fees can legally recover certain costs. Accordingly, a more detailed explanation of the legislative authority and management guidance is provided.

1. Authority Under the INA

Before the IEFA was created in 1988, all activities related to case processing were funded by appropriations. Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988). While fees were charged prior to 1988, the fees were treated as miscellaneous receipts of United States Treasury and deposited in the general fund; those fees were not available to USCIS for spending. The fee account was created to provide an alternative to appropriations. As many of the comments stated, the law does not preclude the use of appropriations to subsidize fee receipts to fund operations. In the absence of appropriations, however, the only funding source is fee revenue. The President's FY 2008 budget is based on user fee funding for USCIS operations (other than expansion of employment verification) and will fund all other USCIS operations from fee receipts. Accordingly, the proposed rule was issued in conjunction with the FY 2008 budget proposal.

INA Section 286(m), 8 U.S.C. 1356(m), provides that the United States may collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants:

> Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary] in regulations shall be deposited as offsetting receipts into a separate account entitled ''Immigration Examinations Fee Account'' in the Treasury of the United States, * * *: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Under this authority, user fees are employed not only for the benefit of the payor of the fee and any collateral benefit resulting to the public, but also provide a benefit to certain others, particularly asylum applicants and refugees and others whose fees are waived.

2. General Authority for Charging Fees

Comments suggested that only the activities directly relating to specific adjudications should be charged to those who apply for the benefits. These comments rely on statutory authority separate from the authority for these fees. The general authority for the federal government to collect fees stems from the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701(b). Under the IOAA, a ''value'' to the recipient is a key threshold factor and the costs of ''public interest'' have been effectively included within the fees. *National Cable Television Ass'n* v. *United States,* 415 U.S. 336 (1974); *FPC* v. *New England Power Co.,* 415 U.S. 345 (1974); *Seafarers Internat'l Union* v. *Coast Guard,* 81 F.3d 179, 183 (D.C. Cir. 1996). In *New England Power Co.,* the Supreme Court held that the IOAA authorizes ''a reasonable charge'' to be made to ''each identifiable recipient for a measurable unit or amount of Government service or property from which [the recipient] derives a special benefit.'' 415 U.S. at 349 (quoting Bureau of the Budget Circular No. A–25 (Sept. 23, 1959)). Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole. *National Cable Television Ass'n,* 415 U.S. at 343–44. So long as the service provides a special benefit above and beyond that which accrues to the public at large to a readily-identifiable individual, the fee is permissible. *New England Power,* 415 U.S. at 349–51 & n. 3.

Prior to the enactment of section 286(m) of the INA, fees charged for immigration services were governed by the IOAA and were judicially reviewed under the IOAA. A more elementary cost analysis than that currently used was upheld by the courts. *Ayuda, Inc.* v. *Attorney General,* 661 F. Supp. 33 (D.D.C. 1987), aff'd, 848 F.2d 1297 (D.C. Cir. 1988). As the Court of Appeals in *Ayuda* stressed, the procedures were ''triggered only at the instance of the individual who seeks, obviously, to benefit from them.'' 848 F.2d at 1301.

The United States is a nation largely built by immigrants and immigration continues to refresh this country. Accordingly, USCIS agrees that there is a certain undeniable public interest in immigration. The costs reflected in the proposed fees exist, however, because applicants and petitioners seek immigration benefits and services. There are also public interests in discrete processes such as background checks. Background checks are an integral part of determining the applicant's eligibility for a benefit, and thus, their costs are appropriate for full recovery through a fee. Were it not for the underlying application or petition for immigration benefits, these specific security checks would not have been conducted.

USCIS authority under section 286(m) of the INA is an exception to any limitation of the IOAA. 31 U.S.C. 9701(c). The relevant, second proviso was added to the INA after the Court of Appeals decided *Ayuda* under the IOAA. Public Law 101–515, sec. 210(d)(1), (2), 104 Stat. 2120, 2121 (Nov. 5, 1990). The statutory provisions in section 286(m) of the INA are broader than the IOAA, authorizing USCIS to recover the full cost of providing benefits and ensuring sufficient revenues to invest in improved service and technology. Even though the requirements of the IOAA do not apply in developing these fees, USCIS is mindful of the need to explain the

process to the general public. *Cf. Engine Manufacturers Assoc.* v. *EPA,* 20 F.3d 1177 (D.C. Cir. 1994).

3. Surcharge for Asylum, Refugee and Fee Waiver/Exemption Costs

Some comments questioned whether fees should include the surcharge for services USCIS provides without fee or where it waives a fee, and asserted that these costs should not be transferred to other applicants. Pursuant to section 286(m) of the INA, USCIS does include these surcharges in other application and petition fees.

USCIS could charge a specific fee to apply for asylum and that fee would be limited to the ''costs in adjudicating the applications.'' Section 208(d)(3) of the INA, 8 U.S.C. 1158(d)(3). The humanitarian nature of the asylum process gives USCIS good reason not to exercise this authority. USCIS has never charged fees for an Application for Asylum, Form I–589. For the same reasons, asylum applicants are exempt from the requirement to submit the fee for fingerprinting with the application for asylum. 8 CFR 103.2(e)(4)(ii)(B).

4. OMB Circular A–25

When a service enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public, a user fee is appropriate. The fact that a process benefits the public interest as well as a private party does not mean that process cannot be funded by a user fee. The entire legal immigration and citizenship process, with respect to both grants of benefits and denials for national security or other reasons, is one that benefits the public as well as private interests, but focuses on the adjudication of eligibility for individual benefits. A fee-based structure is appropriate even when the public as a whole benefits. As OMB Circular A–25 makes clear, ''when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.'' OMB Circular A–25, ¶ 6.a.3. Accordingly, the proposed fees do not conflict with the guidance in OMB Circular A–25.

Moreover, OMB Circular A–25 is one of a series of circulars, bulletins and memoranda issued by OMB for the internal management of the Executive Branch. To be transparent, the circulars and agency use of the circulars are often publicly spelled out in regulations and other public statements. In this case, as with any fee rule of this nature and magnitude, the proposed rule and this final rule have been considered by OMB and other Executive offices in accordance with the appropriate Executive Orders, including Executive Order 12866, as amended, and other management instructions and directives.

While section 286(m) of the INA is a separate authority for the cost analysis and fees, as stated earlier, USCIS follows the procedures outlined in OMB Circular A–25 and standard accounting procedures as discussed in the proposed rule to the extent that they are applicable. Further, the ''full cost'' concept also includes the amount required to manage USCIS or ''overhead.'' The proposed rule described the types of costs that USCIS considered as overheard when determining the proposed fee levels.

One commenter provided a detailed but limiting analysis of USCIS' authority under section 286(m) of the INA, 8 U.S.C. 1356(m), suggesting that ''full cost'' was more limited than suggested in the proposed rule and limited to specific ''activities,'' and suggesting that most of the enhancements fell outside USCIS authority to recover as fees. USCIS disagrees.

Section 286(m) permits USCIS wide latitude in determining the degree to which fees will be used to support operations. USCIS, in conjunction with DHS and OMB, has determined that fees should recover all, but not more, than the cost of operation for USCIS. Accordingly, the Administration has not requested an appropriation for USCIS, except specific funds for expansion of a voluntary employment verification program, for which USCIS is prohibited by statute from charging fees for this program. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, tit. IV, sec. 402(c)(1), 110 Stat. 3009–657 (Sept. 30, 1996).

The ''full cost'' of services may be interpreted, and USCIS interprets the full cost of services to mean all of the support costs for such service within USCIS. The activities that may be included are not strictly those with a direct effect on a specific application or petition, but may include those activities that support the determination, including determining whether fraud is being perpetrated against the immigration system and providing public information to help improve understanding of both the specific applications and petitions and the manner in which immigration benefits are adjudicated. Accordingly, USCIS believes that all of the costs identified in the proposed rule may be recovered through fees.

Finally, the costs of all of the 27 identified enhancements may be recovered. Some of these enhancements are designed to comply with Congressional mandates for the operation of the government; others are designed to ensure that USCIS operates securely and efficiently. While these costs and many other enhancements could be the basis for disagreement, USCIS acts within its discretion to account for them within the fees to be charged.

5. Homeland Security Act

A commenter suggested that the proposed rule, if promulgated in final form, exceeded the authority provided to DHS in the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 1135 (Nov. 26, 2002). In particular, the commenter suggested that the division of functions between USCIS under section 451 of the HSA, 6 U.S.C. 271, and the then-Under-Secretary for Border and Transportation Security under section 441 of the HSA, 6 U.S.C. 251, required a more limited scope for USCIS fees, excluding any law enforcement or national security functions under the Fraud Detection and National Security operations.

Another commenter suggested that USCIS authority was even more restricted to the functions of the former Adjudications Branch of the INS that were transferred to DHS. By contrast, another commenter conceded that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so.

DHS disagrees with these suggested restrictions and agrees that it may fund, as a matter of discretion, all of USCIS operations, or more, from fees. Congress provided the Secretary with reorganization authority to allocate or reallocate functions within DHS. HSA, section 872, 6 U.S.C. 452. The division of functions transferred by the HSA is subject to the direction and management of the Secretary. HSA sections 101, 102; 6 U.S.C. 111, 112. Accordingly, the Secretary may adjust the functions within USCIS or across component lines as appropriate.

The reorganization of functions within USCIS to create the FDNS was a consolidation of specific previous functions to streamline operations. Accordingly, USCIS disagrees that the inclusion of FDNS in the fee calculation is inappropriate and will continue to fund that function through fees.

Furthermore, the functions performed by USCIS are entirely consistent with those transferred from INS to USCIS by the HSA.

Accordingly, this final rule establishes a level of fees sufficient to recover the full cost of operating USCIS. The rule has not been amended to include other costs that could be legally charged or to exclude any costs of operating USCIS.

G. Methods Used To Determine Fee Amounts

The cost of providing the right benefit to the right person in an appropriate amount of time without compromising security is a complex, carefully administered process. The fees promulgated in this final rule reflect the costs resulting from the complexity of the various immigration benefits that USCIS administers and the costs of the large number of benefits provided for which there is no charge. By recovering the full cost of doing business, the revised fee schedule will enable USCIS to reduce application and petition processing times and improve customer service, and in the long run, make the legal immigration process more secure, efficient, and welcoming to all immigrants.

1. USCIS Costs

A number of comments questioned or asked for additional information on the methodology used to determine USCIS costs. Others questioned the costs and calculations provided in the proposed rule, while some requested an invoice that details the costs of services. USCIS is making no changes to the final rule as a result of these comments.

Detailed information on the methodology and the cost components and calculations was provided in the proposed rule and remains on the docket of this rule, and will be provided directly by USCIS upon request. The underlying supporting elements, such as independent legal requirements, the General Schedule pay scales, or travel reimbursement rates, are all publicly available. In the notice of proposed rulemaking, USCIS offered to provide the public with an opportunity to review the functioning of the computerized cost model used by USCIS through onsite viewing on its computer system. While USCIS cannot provide complete access to the computer software purchased under license, USCIS' fee determination is, within reason, an open process, and a summary of how calculations were made and results achieved were available for review upon request. USCIS did not receive any requests to access the modeling program.

Finally, preparation of an ''invoice'' would be an additional administrative task that would itself add to the costs to be recovered by the fees. The United States does not prepare such documents beyond the warrants, journals, ledgers, and books of account required to be prepared and preserved by law and Executive policy. *See,* e.g. OMB, *Financial Reporting Requirements,* OMB Circular A–136 (rev. July 24, 2006).

2. Alternative Budget Modeling

Several commenters suggested that USCIS consider alternative budget modeling. One commenter suggested using a ''zero-based budget'' to determine application and petition fees, stating that the enacted FY 2007 IEFA budget used by USCIS could involve inefficient expenditures that waste time and money and disserve immigrants and families who have filed applications or petitions. A ''zero-based budget,'' or ZBB, is a planning tool in which all expenditures must be justified and analyzed. The United States attempted ZBB in the late 1970s. The first requirements for the calculation of a ''current services'' baseline were enacted in the early 1970s, and a variety of concepts and measures have been employed, including ZBB. USCIS believes, however, that the baseline has serious technical flaws, which compromise its ability to serve as a neutral measure. ZBB, like other systems such as Planning-Programming-Budgeting System (PPBS), can be a useful tool, but requires defined decision units that, for a service organization like USCIS, would mean a complete time and motion study of every activity, which would be very labor intensive and time consuming and which would be a cost factored into the fee requirements.

The commenters' concerns about the budgeting methods are addressed in the fee determination and budgeting methodology utilized. The Budget of the United States is developed on a ''current services estimates,'' or ''baseline'' budgeting, methodology which is designed to provide a neutral benchmark against which policy proposals can be measured. The current services estimates (which include inflation) may only be changed through justification of adjustments and enhancements. Accordingly, consistent with the United States Government budget methodology, USCIS used the FY 2007 congressionally-enacted spending level as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. This budget accurately reflects USCIS' current spending as approved by the Congress.

Consistent with its previous comprehensive fee review, USCIS used the FY 2007 budget as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. In addition, prior to the start of FY 2007, USCIS leadership conducted an extensive evaluation of its FY 2007 spending. This level of scrutiny has enabled USCIS to meet several service delivery goals, such as eliminating the application and petition backlog. The scrutiny employed in analyzing the USCIS cost structure and future needs should minimize misused resources. Thus, USCIS disagrees with the assertion that its current expenditures are inefficient.

Another commenter suggested that USCIS use the actual time it took to perform the various immigration adjudication and naturalization activities, with no analysis of whether USCIS could operate its program more efficiently and for a reduced cost to those paying fees, thereby implying that greater efficiencies could be factored into the proposed fees.

USCIS disagrees with this suggestion. To the extent practical, USCIS has factored into the fees those efficiencies that can be predicted (particularly enhancements). USCIS is firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of our customers, and the new fee structure will enable USCIS to make improvements that will ultimately help reduce USCIS costs. Productivity enhancements that affect hours per completion calculations produce lower cost per unit. Process improvements implemented over the past several years, as well as projected productivity increases, were taken into account in the current fee review, keeping fees lower than they might otherwise have been. Specifically, this fee increase reflects USCIS' commitment to a projected four percent increase in productivity for Adjustment of Status Application processing, and a two percent increase in productivity for all other applications and petitions. USCIS will remain accountable for these projected productivity increases in order for fees to support operations as intended.

Another commenter expressed concerns about the level of scrutiny in

identifying the amount of the additional resource requirements or enhancements. These costs were subject to the same level of scrutiny as all other USCIS costs. The additional resource requirements have been carefully reviewed by both DHS and OMB to ensure accuracy, and are displayed (with assumptions) in the supporting fee review documentation on the docket. USCIS provided this detailed information for transparency purposes to facilitate public scrutiny during the sixty-day public comment period.

3. ''Make Determination'' Activity

A few commenters questioned the calculation of the ''Make Determination'' activity cost estimates as well as the volume estimates used in the fee review. As explained in the proposed rule and the fee review supporting documentation, ''Make Determination'' costs were assigned to the applications and petitions by completion rates (level of effort or complexity) and workload volume. USCIS uses the most current and accurate completion rates and workload volumes provided by the USCIS Performance Analysis System. USCIS adjusts these workload volumes to reflect filing trends in FY 2007 and projected changes for FY 2008/2009. The USCIS Workload and Fee Projection Group leverages a time series model based on a regression analysis over the last fifteen years, with the most recent data trends given the greatest weight.

The commenters quoted two particular instances of concern, one being the variance between the Application to Preserve Residence (with a completion rate of 3.39 hours and a make determination cost of $428) and Petition for Amerasian, Widow(er), or Special Immigrant (with a completion rate of 3.21 hours and a make determination cost of $2,268); and the other being the variance between the Application To Extend/Change Nonimmigrant Status, Form I–539 (with a completion rate of 1.32 hours at the local office and 0.39 hours at the service center and a make determination cost of $84), and the Petition to Remove Conditions of Residence, Form I–751 (with a completion rate of 1.36 hours at the local office and 0.46 hours at the service center and a make determination cost of $210). These variations are driven by the volumes associated with each application. In the first instance, the workload volume of Application to Preserve Residence filings is equal to the fee-paying volume (669), which means that the costs to process these applications are spread to an equal amount of applications for which a fee is received. The fee-paying volume of the Petition for Amerasian, Widow(er), or Special Immigrant is much less than the workload volume (4,772 compared to 16,000) resulting in costs being spread to fewer applications and, consequently, a higher Make Determination cost. The second instance is simply a case of costs being spread to a greater number of applications (220,000 for Application To Extend/Change Nonimmigrant Status compared to 143,000 for the Petition to Remove Conditions of Residence) resulting in a lower unit cost. After reviewing these comments, USCIS remains convinced that the calculations are correct.

One commenter also questioned why the costs for an Application for EAD are significantly higher than the Application for LPR Card costs, when Application for EAD completion rates for local offices, service centers, and National Benefits Center are lower than the Application for LPR Card completion rates. As stated in the proposed rule, $11.5 million in Application Support Center contract costs directly support processing an Application for LPR Card. Therefore, this cost comparison cannot be fairly analyzed by solely looking at the completion rates at local offices, service centers, or the National Benefits Center since a significant portion of the work is performed outside these offices.

4. Activity-Based Costing

A few commenters suggested that USCIS' activity-based costing analysis was flawed since USCIS included completion rates for local offices that no longer have jurisdiction or responsibility to process certain form types (e.g., Nonimmigrant Worker Petition, Form I–129; Petition for Alien Fiance(e), Form I–129F; Alien Employee Petition, Form I–140; Application To Extend/Change Nonimmigrant Status, Form I–539; Petition by Entrepreneur to Remove Conditions, Form I–829), and service centers that do not have jurisdiction or responsibility to process certain forms (e.g. Application to Preserve Residence for Naturalization Purposes, Form N–470). While it is true that certain USCIS offices have primary jurisdiction over particular form types, it is not uncommon for form types to be processed at other USCIS offices for various reasons. For example, service centers will refer cases to local offices for interview. These volumes, however, are relatively small, and, therefore, the cost impact is minimal. For example, of the 439 Application to Preserve Residence filings processed in FY 2006, USCIS processed 427 (or 97 percent) at local offices and twelve (or 3.0 percent) at service centers.

A commenter questioned why the Naturalization Application is filed at service centers, but no completion rate data is provided for service center processing. Completion rate data is displayed for local offices instead of service centers for this benefit because the local offices perform the adjudication. Using completion rate data for benefits that are only received at Service Centers and not adjudicated would not be accurate.

Another commenter suggested that it is simply not credible that local offices spend an average of two hours processing each Alien Employee Petition, when service centers only spend 52 minutes on an Alien Employee Petition. For various reasons, more complex cases are referred to local offices for an interview, explaining why the completion rate varies from service center to local office. However, as previously stated, the volumes are relatively small for these cases, and therefore the cost impact is minimal.

A commenter also questioned the increased fee for the Application for EAD, stating that the proposed fee is inaccurate given that USCIS implemented a new policy to no longer issue interim EADs at local offices. Because local offices have higher completion rates than other offices for this benefit, the commenter stated that the fee should be re-calculated and reduced. Although USCIS has implemented a new policy to no longer issue interim EADs at local offices, the practice of where the adjudication takes place has not changed. Local offices will continue to adjudicate Application for EAD filings and, therefore, USCIS believes the fee is accurate as stated in the proposed rule.

5. Calculating Specific Processing Requirements

One commenter remodeled the costs for the fee increase for an Adjustment of Status Application and questioned the 66 percent fee increase calculation after consolidating the fees for the Application for EAD that previously required additional fees. The commenter stated that if the Adjustment of Status Application processing time is seven months as stated in the proposed rule, then applicants pay for only one Application for EAD and one Adjustment of Status Application, for fees of $675, not what USCIS assumed for two Applications for EAD and one Adjustment of Status Application, for fees of approximately $800. The processing times identified in the proposed rule represent the processing

times for applications and petitions within USCIS control. When including the volume of Adjustment of Status Applications that are not within USCIS control, the processing times for the Adjustment of Status Applications in total are closer to one year. With a processing time of one year, the average applicant normally would pay for two employment authorizations, not one. Therefore, the USCIS calculation is correct.

6. Overhead Charges

One commenter questioned the methodology behind incorporating overhead costs into the processing costs for each application and petition, suggesting that these costs are not connected to actually moving an application or petition forward. The goal of the fee review is to recover the resources necessary to fund the full cost of processing immigration benefit applications and petitions for which USCIS charges a fee, plus the cost of similar services provided at no cost. Overhead items, such as the rent necessary to house Adjudication Officers, are vital to the operation of USCIS and are not a means for hiding expenditures, as suggested. These costs were spread in a pro rata fashion to the processing activities based on the number of government employees and the specific schedules of required space. That is, the more government staff time associated with a processing activity, the higher the overhead costs associated with that activity. Further detail of the overhead cost calculation, including the number of government staff per office and the identification of overhead items, are provided in the fee review supporting documentation available on the docket.

7. Recovering Deficit From Current Operations

One commenter addressed the fact that USCIS is losing money on each application and petition now being filed in advance of the increase and questioned whether the increase in fees was intended to recover these losses. The fee increase is not intended to recover the losses currently being sustained by USCIS or for retiring any accumulated deficits. USCIS is currently closing a funding gap created by the insufficiency of the fee schedule by relying on spending cuts to critical programs and services, premium processing revenues, interim benefit revenues, and revenues from temporary programs to fund base operations. The fees are designed to recover the costs of operations in the future and are not retroactive.

The commenter also noted the decrease in the projected number of Application for LPR Card filings and the recent surges in Naturalization Application filings. The commenter expressed concern that USCIS did not explain the projected decline in Application for LPR Card filings and wanted to know the impact if volumes declined more than what was projected in the fee review (e.g., Naturalization Applications). As identified in the workload assumptions of the fee review supporting documentation, the decline in projected Application for LPR Card filings is due to the increase in projected Naturalization Application filings. Projections are not expected to vary widely from those in the fee review. Regardless, USCIS' new fee model enables USCIS to adjust fees in a timely manner and USCIS plans to continuously review fees. If unforeseen costs or volumes result in fees that are not recovering full costs, a new fee schedule may be proposed before the fee review that is required by OMB Circular A–25 and law to be undertaken in two years.

8. Charging a Flat Fee

At least one commenter suggested that USCIS should change its methodology and charge the same fee amount regardless of the complexity of the immigration benefit. Fees based on the complexity of the application or petition are consistent with standard cost accounting practices and are also consistent with USCIS' past fee setting practices. USCIS does not agree that charging the same fee, regardless of the benefit, is a better methodology. USCIS believes that applicants and petitioners should generally pay a reasonable fee commensurate with the level of effort required to adjudicate such application or petition.

9. Financial Audits

Some commenters suggested that USCIS' costs should be subject to an audit. Federal law already requires an annual audit of financial activity, including cost, revenues, and payments for all executive agencies. 31 U.S.C. 3521, 7501–7506. USCIS costs are included in DHS's financial statements. The DHS Office of Inspector General (OIG) employs an independent public accounting firm to audit all DHS and component financial statements. In addition, GAO and OIG conduct reviews of the effectiveness and efficiency of USCIS programs and operations, providing recommendations for improvements.

10. Acceptance of Electronic Payment Options

Several comments recommended USCIS accept credit cards for all filings, both for convenience and also to let filers take advantage of the credit aspect of the card, to pay the amount to their credit card vendor over time, pointing out that this would slightly soften the impact of the new fees. While the commenters' suggestion cannot be implemented at this time, USCIS plans to expand electronic payment acceptance over time as it shifts receipting of applications and petitions to other platforms such as lockboxes operated by the Department of the Treasury.

11. Other USCIS Fees

One commenter questioned whether USCIS is fully accounting for all its other fee revenues. The commenter noted an additional $44 million in fee revenues from other accounts as noted in the FY 2006 budget request, and asked specifically about disposition of the money from the anti-fraud fee under section 286(v) of the INA, 8 U.S.C. 1356(v). As noted in the proposed rule, in addition to the IEFA, USCIS receives fee funding from several smaller, specific accounts, such as the H–1B Nonimmigrant Petitioner Account under section 286(s) of the Act, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the Act, 8 U.S.C. 1356(v), which this proposed rule does not affect.

In FY 2006, the Congress enacted $31 million for activities funded from the Fraud Prevention and Detection Account. The requested amount is set by statute providing USCIS with one-third of the fraud fees collected for the H1-B, H2-B, and L visas and applied to fraud prevention and detection activities. The proposed rule addresses the costs of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services of the IEFA, which is in addition to the costs for activities funded from the Fraud Prevention and Detection Account.

IV. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a

small governmental jurisdiction (locality with fewer than fifty thousand people). USCIS determined which entities were small by using the definitions supplied by the Small Business Administration. The size of the companies was determined by using the *ReferenceUSA* databases at *http://www.referenceusa.com/*. Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket.

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. These applications include the Nonimmigrant Worker Petition and the Alien Employee Petition. USCIS conducted a statistically valid sample analysis of applicants of these application types to determine if this rule has an economically significant impact on a substantial number of small entities.

Out of the 439,000 applications filed in FY 2005 for these application types, USCIS first identified the minimum sample size that was large enough to achieve a 95 percent confidence level. This sample size was identified as 383 (out of a total of 149,658 unique entities that filed applications in FY 2005). USCIS then randomly selected 653 entities, of which 561 or 86 percent were classified as small entities. Therefore, USCIS determined that a substantial number of small entities are impacted by this rule. This determination was not updated based on FY 2006 or FY 2007 applications since programs have not substantially changed and the percentage of small business applicants is expected to remain fairly constant.

USCIS then analyzed the economic impact on small entities of this rule by: (1) Identifying the number of applications filed by the small entities having sales revenue data identified by the random sample and (2) multiplying the number of applications by the fee increase associated with the applicable application types in order to estimate the increased annual burden imposed by this rulemaking. Once USCIS determined the additional cost of this rulemaking on the randomly selected small entities, USCIS divided this total increased cost by the annual sales revenue of the entity. By comparing the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities, USCIS was able to understand the economic impact of this rule on the individual small entities USCIS has sampled. Using the *ReferenceUSA* database of business information, USCIS was able to identify annual sales revenue estimates for 273 of the 561 small entities previously sampled. Of the 273 small entities, 213 or about 78 percent of the small entities exhibited an impact of less than one tenth of one percent of sales revenue, and all of the small entities sampled exhibited an impact of less than one percent of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only six one hundredths of one percent of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this rule.

One comment was received on the USCIS determination that a substantial number of small entities are not significantly impacted economically by this rule. First, the commenter suggested that the sample size used to make this determination was too small to provide an accurate picture of the rule's impact on small firms. Second, the commenter suggested that USCIS failed to consider that many firms pay for an alien's individual immigration benefit application fee in addition to those incurred by the business.

The sample size used by USCIS was statistically valid to allow USCIS to estimate the rule's impact on small entities. In the initial regulatory flexibility analysis, USCIS determined that 86 percent of the affected entities were small entities using Small Business Administration classifications. Eighty-six percent represents a significant majority. More importantly, USCIS compared the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities and determined that the rule would, on average, have an impact of only 0.063 percent of sales revenue.

The commenter is correct that USCIS did not consider the effect on firms that choose to pay alien's individual immigration benefit application fee to induce the alien to accept a position with their firm. The Immigration Benefit Application and Petition Fee Schedule is established based on the assumption that an individual alien will pay his or her own application or petition fees and does not impose any regulatory requirement on a firm to pay fees for their employees. A business may choose to assist an employee in that manner; however, since it is not a direct cost imposed by USCIS on the firm, it was not a consideration for the analysis of the impacts of this rule.

The employment-based visa programs of USCIS are predominately used by small businesses, 86 percent as determined by the initial regulatory flexibility analysis. After the changes made in this rule, the participating firms will still be predominantly small. Nonetheless, while a significant number of small businesses are affected, USCIS has determined that the effects on these small businesses are not sufficiently significant to exceed this rule's benefits or require adjustments in the rule's requirements based on the size of a petitioner's business. If fee discounts or exceptions were allowed for employment-based immigration benefits based on firm size, the predomination of small firms in the programs would result in the small percentage of larger firms that participate being required to pay an inordinate portion of the costs of adjudicating employment-based immigration petitions. Further, USCIS has determined that, even for a small entity, the amount of the fees established in the USCIS Immigration Benefit Application and Petition Fee Schedule are so small as to impose no significant financial or compliance burden on such firms.

In summary, although the analysis shows that this rulemaking would affect a substantial number of small entities, the economic impact of this rule was found to be negligible. This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, USCIS is required to take no steps to minimize or mitigate the effects of this rule on small entities.

B. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires certain actions to be taken before an agency promulgates any notice of rulemaking ''that is likely to result in promulgation of 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 one hundred million or more (adjusted annually for inflation) in any one year.'' 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than one hundred million by the private sector annually, the rulemaking is not a ''Federal mandate'' as defined for these purposes, 2 U.S.C. 658(6), as the payment of application and petition fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.

2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this rule would provide USCIS with an additional $1.081 billion in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 4.742 million applications/petitions and 2.196 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the Act, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS will be forced to implement significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the proposed rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. Accordingly, this rule has been reviewed by the Office of Management and Budget.

In response to the proposed rule, one commenter expressly questioned the rule's benefit and cost analysis. This commenter stated that USCIS had not conducted a sufficient analysis of the costs, benefits, and, foreseeable consequences of the fees proposed. The commenter is correct that USCIS is required under Executive Order 12866 to perform an analysis of this benefits and costs of this rule that complies with OMB Circular A–4, Regulatory Analysis (09/17/2003) (OMB Circular A–4). However, as A–4 states, ''There are justifications for regulations in addition to correcting market failures. A regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently.'' The need for this final rule is not based on economics or a failure of the private markets to address a problem but, rather, on enhancing the ability of USCIS to advance its goal of improving the delivery of immigration programs. This rule is intended to correct breakdowns in the delivery of immigration benefit programs that have occurred as a result of the currently inadequate fee schedule. Further, as OMB Circular A–4 states, ''It will not always be possible to express in monetary units all of the important benefits and costs.'' The net economic effects of this rule are difficult if not impossible to determine.

The public policy rationale behind the United States immigration policies are well known and the benefit of immigrants to the United States and its citizens are enormous, as reiterated in the thousands of comments received on the proposed rule. As stated throughout the proposed rule and repeated often in this final rule, the fees established by this rule are necessary to update and modernize the USCIS infrastructure. The fee amounts comport with methodology required by OMB and meet both government and private sector standards. Also, while an equilibrium analysis has not been performed, the demand for immigration benefits obviously and greatly exceeds the availability of such benefits. Thus, these fees will have no impact on application volumes or any other public behavior. If USCIS can cover its expenses, delays in processing benefits and complaints about USCIS service will abate. That is a tangible and noticeable benefit. Thus, the benefits of this rule exceed its costs. OMB has reviewed this rule and concurs in this conclusion.

One commenter stated that USCIS did not consider the potential costs and benefits of pursuing possible alternative funding sources. This comment is similar to many comments suggesting that USCIS must pursue a Congressional appropriation that were addressed earlier. With regard to the analysis of the benefits or pursuing alternative funding sources, these comments are beyond the scope of the regulation. USCIS is limited to this rulemaking as an affirmative source of addressing shortfall in its revenues under section 286(m) of the INA, 8 U.S.C. 1356(m). If Congress provides funds for USCIS operations, the benefits of that action, especially as it relates to persons who pay fees, are self evident. An in-depth economic analysis is not required for USCIS to recognize that fact. With regard to ''benefits of pursuing possible alternative funding,'' USCIS sees no benefit and only costs to be realized from such a pursuit. Congress is well aware of the funding scheme described in this rule.

E. Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require minor amendments to applications and petitions to reflect the new fees. In addition, this rule anticipates (but is not dependent on) consolidating the Application for Travel Document and Application for EAD into the Application of Adjustment of Status since applicants will not be required to

file three separate application types in order to apply for adjustment of status, travel documents, and employment authorization. This change will reduce paperwork burdens on these applicants. The necessary revisions to the approved information collection burden for any new or revised applications will be submitted to OMB for approval before being issued for use by USCIS as required under the PRA and 5 CFR 1320.

Since the forms will be amended to reflect the new fees, USCIS will submit the appropriate requests for non-substantive change to OMB to reflect the additional costs.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

■ Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7 is amended by:

■ a. Removing the entries for ''Form I–506'' ''Form I–914'' and ''Motion'' in paragraph (b)(1);

■ b. Revising the entries ''For capturing biometric information'' and the entries for forms ''I–90, I–102, I–129, I–129F, I–130, I–131, I–140, I–191, I–192, I–193, I–212, I–290B, I–360, I–485, I–526, I–539, I–600, I–600A, I–601, I–612, I–687, I–690, I–694, I–695, I–698, I–751, I–765, I–817, I–824, I–829, N–300, N–336, N–400, N–470, N–565, N–600, and N–600K''in paragraph (b)(1); and by

■ c. Adding paragraph (c)(5).

The revisions and addition read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For capturing biometric information (Biometric Fee). A service fee of $80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States; provided that: *Extension for intercountry adoptions:* If applicable, no biometric service fee is charged when a written request for an extension of the approval period is received by USCIS prior to the expiration date of approval indicated on the Form I–171H if a Form I–600 has not yet been submitted in connection with an approved Form I–600A. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for a subsequent application.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$290.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed—$320.

Form I–129. For filing a petition for a nonimmigrant worker—$320.

Form I–129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act—$455; no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on Form I–130.

Form I–130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act—$355.

Form I–131. For filing an application for travel document—$305.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$475.

Form I–191. For filing an application for discretionary relief under section 212(c) of the Act—$545.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$545.

Form I–193. For filing an application for waiver of passport and/or visa—$545.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—$545.

* * * * *

Form I–290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—$585 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision). *Motions.* For filing a motion to reopen or reconsider any DHS decision in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. This fee shall be charged whenever a motion is filed to reopen or reconsider a single decision, whether it applies to one or multiple beneficiaries—$585.

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$375, except there is no fee for a petition seeking classification as: An Amerasian; a self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or a Special Immigrant—Juvenile.

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$930 for an applicant fourteen years of age or older; $600 for an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I–485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent; no fee for an applicant filing as a refugee under section 209(a) of the Act; provided that no additional fee will be charged for a request for travel document (advance parole) or employment authorization filed by an applicant who has paid the Form I–485 application fee, regardless of whether the Form I–131 or Form I–765 is required to be filed by such applicant to receive these benefits.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$1,435.

Form I–539. For filing an application to extend or change nonimmigrant status—$300.

* * * * *

Form I–600. For filing a petition to classify an orphan as an immediate

relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A if a written request from the applicant for an extension of the approval has been received by USCIS prior to the expiration date of approval indicated on the Form I–171H. This extension will require an update of the applicant's home study and a determination from USCIS that proper care will be provided to an adopted orphan. A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both sections 212(h) and (i).)—$545.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$545.

Form I–687. For filing an application for status as a temporary resident under section 245A(a) of the Act. A fee of $710 for each application is required at the time of filing with the Department of Homeland Security.

Form I–690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$185.

Form I–694. For appealing the denial of an applications under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$545.

Form I–695. For filing an application for replacement of temporary resident card (Form I–688)—$130.

Form I–698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within thirty-one months from the date of adjustment to temporary resident status, a fee of $1,370 for each application is required at the time of filing with the Department of Homeland Security. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of $1,410 is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$465.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$340.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$440.

* * * * *

Form I–824. For filing for action on an approved application or petition—$340.

Form I–829. For filing a petition by entrepreneur to remove conditions—$2,850.

* * * * *

Form N–300. For filing an application for declaration of intention—$235.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—$605.

Form N–400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)—$595.

* * * * *

Form N–470. For filing an application for benefits under section 316(b) or 317 of the Act—$305.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$380.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$460, for applications filed on behalf of a biological child and $420 for applications filed on behalf of an adopted child.

Form N–600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act—$460, for an application filed on behalf of a biological child and $420 for an application filed on behalf of an adopted child.

* * * * *

(c) * * *

(5) No fee relating to any application, petition, appeal, motion, or request made to United States Citizenship and Immigration Services may be waived under paragraph (c)(1) of this section except for the following: Biometrics; Form I–90; Form I–485 (only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status); Form I–751; Form I–765; Form I–817; Form N–300; Form N–336; Form N–400; Form N–470; Form N–565; Form N–600; Form N–600K; and Form I–290B and motions filed with United States Citizenship and Immigration Services relating to the specified forms in this paragraph (c).

* * * * *

Dated: May 3, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–10371 Filed 5–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26857; Directorate Identifier 2006–NM–126–AD; Amendment 39–15069; AD 2007–11–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Airbus Model A310 series airplanes. That AD currently requires inspections of the lower door surrounding structure to detect cracks and corrosion; inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. That AD also currently

provides for optional terminating action for certain inspections. This new AD retains all requirements of the existing AD, mandates the previously optional terminating action, and reduces the applicability of the existing AD. This AD results from a determination that further rulemaking is necessary to improve the fatigue behavior of the cabin door surroundings. We are issuing this AD to prevent corrosion between the scuff plates at exit and cargo doors and fatigue cracks originating from certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings.

DATES: This AD becomes effective July 5, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 5, 2007.

On September 4, 1998 (63 FR 40819, July 31, 1998), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98–16–06, amendment 39–10682 (63 FR 40819, July 31, 1998). The existing AD applies to all Airbus Model A310 series airplanes. That NPRM was published in the **Federal Register** on January 19, 2007 (72 FR 2464). That NPRM proposed to retain the requirements of AD 98–16–06. These requirements are inspections of the lower door surrounding structure to detect cracks and corrosion; inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. That NPRM also proposed to mandate the previously optional terminating action, and reduce the applicability of the existing AD.

Comments

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

Request To Give Credit for Previous Inspections

FedEx concurs with the NPRM, but requests that we give credit for previous inspections (initial and repetitive) accomplished in accordance with AD 98–16–06. FedEx points out that this credit should be given for actions in paragraphs (f), (g), and (l) of the NPRM.

We partially agree with the request. We agree that it is necessary for the AD to give credit for inspections accomplished previously in accordance with AD 98–16–06. We disagree that it is necessary to change the AD in this regard. Paragraph (e) of the AD states, ''You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.'' Therefore, the AD already gives credit for required actions that were accomplished according to AD 98–16–06.

Explanation of New Service Information

Airbus has issued Service Bulletin A310–53–2037, Revision 03, including Appendix 01, dated July 26, 2006. We referred in the NPRM to Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992; and Revision 02, dated November 27, 2000; as the appropriate source of service information for accomplishing certain actions. Revision 03 of the service bulletin updates the effectivity and improves the inspection and repair procedures. Revision 03 states that no additional work is required for airplanes modified in accordance with Revision 02 or any previous revision. We have changed Table 1 in paragraph (n) of this AD to refer to Revision 03 for accomplishing certain required actions, and we have changed Table 3 in paragraph (p) of this AD to give credit to operators who accomplished the actions in accordance with Revision 02 of the service bulletin.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate per work hour is $80.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive inspections behind scuff plates (required by AD 98–16–06).	26	None	$2,080	46	$95,680.
Repetitive inspections of corner doublers, fail-safe ring, and door frames (required by AD 98–16–06).	Between 4 and 100 depending on kit purchased.	None	Between $320 and $8,000.	46	Between $14,720, and $368,000 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Terminating modification for repetitive inspection of corner doublers, fail-safe ring, and door frames.	Between 8 and 55 depending on kit purchased.	Between $506 and $6,098 depending on kit purchased.	Between $1,146 and $10,498.	46	Between $52,716 and $482,908.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–10682 (63 FR 40819, July 31, 1998) and by adding the following new airworthiness directive (AD):

2007–11–12 Airbus: Amendment 39–15069. Docket No. FAA–2007–26857; Directorate Identifier 2006–NM–126–AD.

Effective Date

(a) This AD becomes effective July 5, 2007.

Affected ADs

(b) This AD supersedes AD 98–16–06.

Applicability

(c) This AD applies to Airbus Model A310 series airplanes; certificated in any category; excluding those airplanes on which Airbus Modifications 5068, 7201, and 7298 have been incorporated in production.

Unsafe Condition

(d) This AD results from a determination that further rulemaking is necessary to improve the fatigue behavior of the cabin door surroundings. We are issuing this AD to prevent corrosion between the scuff plates at exit and cargo doors and fatigue cracks originating from certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings.

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.

Requirements of AD 98–16–06

Initial Inspection Behind Scuff Plates and Repair if Necessary With Revised Affected Doors

(f) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A310–53–2030, Revision 5, dated March 6, 1991, at the applicable time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD. If any crack or corrosion is found during this inspection, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For any door on which Modification 5382 and Modification 5382D4741 for all other doors have been accomplished: Perform the initial inspection within 9 years since airplane manufacture, or within 1 year after September 4, 1998 (the effective date of AD 98–16–06), whichever occurs later.

(2) For any door on which Modification 5382 and Modification 5382D4741 for all other doors have not been accomplished, and on which the procedures described in Airbus Service Bulletin A310–53–2004, Revision 2, dated June 17, 1985; or Airbus Service Information Letter 53–033, Revision 2, dated November 23, 1984; have been accomplished: Perform the initial inspection within 5 years since airplane manufacture, or within 1 year after September 4, 1998, whichever occurs later.

(3) For any door on which Modification 5382 and Modification 5382D4741 for all other doors have not been accomplished, and on which the procedures described in Airbus Service Bulletin A310–53–2004, Revision 2, dated June 17, 1985; or Airbus Service Information Letter 53–033, Revision 2, dated November 23, 1984; have not been accomplished: Perform the initial inspection within 4 years since airplane manufacture, or within 1 year after September 4, 1998, whichever occurs later.

Repetitive Inspections Behind Scuff Plates

(g) Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A310–53–2041, Revision 02, dated July 2, 1996, at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. Accomplishment of these inspections is not required for the aft passenger/crew doors if

a steel doubler that covers the entire inspection area is installed.

(1) For the forward passenger/crew doors, the bulk cargo door, and the aft passenger/crew doors, except the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler, on all Model A310–200 and –300 series airplanes: Perform the first inspection within 5 years after accomplishing the inspection required by paragraph (f) of this AD; and repeat the inspection thereafter at intervals not to exceed 5 years.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew door on all Model A310–200 series airplanes: Perform the first inspection within 5 years or 12,000 landings after accomplishing the inspection required by paragraph (f) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 12,000 landings, whichever occurs first.

(3) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew door on all Model A310–300 series airplanes: Perform the first inspection within 5 years or 7,000 landings after accomplishing the inspection required by paragraph (f) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 7,000 landings, whichever occurs first.

Repair of Scuff Plates if Necessary

(h) If any crack is found during any inspection required by paragraph (g) or (n) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2041, Revision 02, dated July 2, 1996. Thereafter, perform the repetitive inspections required by paragraph (g) of this AD at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(i) If any corrosion is found during any inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2041, Revision 02, dated July 2, 1996. Thereafter, perform the repetitive inspections required by paragraph (g) of this AD at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For Model A310–200 series airplanes: Inspect at intervals not to exceed 5 years or 9,600 landings, whichever occurs first.

(2) For Model A310–300 series airplanes: Inspect at intervals not to exceed 5 years or 5,600 landings, whichever occurs first.

(j) Accomplishment of the actions required by paragraph (g), (h), or (i) of this AD in accordance with Airbus Service Bulletin A310–53–2041, dated December 5, 1990; or Revision 01, dated March 6, 1991; prior to September 4, 1998, is acceptable for compliance with that paragraph.

Initial Inspection of Corner Doublers, Fail-Safe Ring, and Door Frames

(k) Perform an inspection to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the left- and right-hand forward, mid, and aft passenger/crew door structures, in accordance with Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992, and at the applicable times specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) For the upper corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after September 4, 1998, whichever occurs later.

(2) For the lower corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after September 4, 1998, whichever occurs later.

(3) For the upper and lower corners of the aft doors, and for the parts underneath the corners of the upper door frames: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after September 4, 1998, whichever occurs later.

Repetitive Inspections of Corner Doublers, Fail-Safe Ring, and Door Frames

(l) Repeat the inspections required by paragraph (k) of this AD at the applicable times specified in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), and (l)(5).

(1) For the upper corners of the forward doors: Inspect at intervals not to exceed 6,000 landings.

(2) For the lower corners of the forward doors: Inspect at intervals not to exceed 10,000 landings.

(3) For the upper and lower corners of the aft doors on which an inspection required by paragraph (k) of this AD was accomplished using a ROTO test technique: Inspect at intervals not to exceed 8,000 landings.

(4) For the upper and lower corners of the aft doors on which an inspection required by paragraph (k) of this AD was accomplished using an x-ray technique: Inspect at intervals not to exceed 3,500 landings.

(5) For the areas around the fasteners in the vicinity of stringer 12 on the upper door frames of the aft doors on which an inspection required by paragraph (k) of this AD was accomplished using a visual technique: Inspect at intervals not to exceed 6,900 landings.

Repair of Corner Doublers, Fail-Safe Ring, and/or Door Frames if Necessary

(m) If any crack is found during any inspection required by paragraph (k) or (l) of this AD: Prior to further flight, accomplish the requirement of paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) If any crack is found, and the crack can be eliminated using the method specified in Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992; or Revision 02, dated November 27, 2000: Prior to further flight, repair the crack in accordance with that service bulletin.

(2) If any crack is found, and the crack cannot be eliminated using the method specified in Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992; or Revision 02, dated November 27, 2000: Prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

New Requirements of This AD

New Revision of Service Bulletins

(n) As of the effective date of this AD, use only the service bulletins specified in Table 1 of this AD.

TABLE 1.—NEW REVISION OF SERVICE BULLETINS

Do the action(s) required by—	In accordance with the accomplishment instructions of Airbus Service Bulletin—
(1) Paragraph (f) of this AD	A310–53–2030, Revision 06, dated July 2, 1996.
(2) Paragraph (k) and (m)(1) of this AD	A310–53–2037, Revision 03, excluding Appendix 01, dated July 26, 2006.

Terminating Modification for Repetitive Inspection of Corner Doublers, Fail-Safe Ring, and Door Frames

(o) Modify the passenger/crew door structures in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2017, Revision 09, dated May 17, 2004. Do the modification at the applicable time in paragraph (o)(1) or (o)(2) of Table 2 of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (l) of this AD. The inspections required by paragraph (f) of this AD must be done before accomplishing this modification.

TABLE 2.—COMPLIANCE TIME FOR TERMINATING MODIFICATION

For model—	Compliance time
(1) A310–203, –204, –221, and –222 airplanes	Before the accumulation of 40,000 flight cycles since the date of issuance of the original French standard Airworthiness Certificate or the date of issuance of the original French Export Certificate of Airworthiness, or during the next inspection required by paragraph (l) of this AD, whichever occurs later.
(2) A310–304, –322, –324, and –325 airplanes	Before the accumulation of 35,000 flight cycles since the date of issuance of the original French standard Airworthiness Certificate or the date of issuance of the original French Export Certificate of Airworthiness, or during the next inspection required by paragraph (l) of this AD, whichever occurs later.

Earlier Revision of Service Bulletins

(p) Actions done before the effective date of this AD in accordance with the service bulletins identified in Table 3 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 3.—EARLIER REVISION(S) OF SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
(1) A310–53–2017	07	February 25, 1992.
(2) A310–53–2017	08	September 7, 2000.
(3) A310–53–2037	02	November 27, 2000.

Alternative Methods of Compliance (AMOCs)

(q)(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) Alternative methods of compliance, approved previously in accordance with AD 98–16–06 are approved as alternative methods of compliance with the corresponding provisions of paragraphs (f) through (m) of this AD.

(3) 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

(r) French airworthiness directives 1991–132–124(B) R1, dated November 29, 2000, and F–2004–103, dated July 7, 2004, also address the subject of this AD.

Material Incorporated by Reference

(s) You must use the service information listed in Table 4 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 4.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A310–53–2017	09	May 17, 2004.
A310–53–2030	5	March 6, 1991.
A310–53–2030	06	July 2, 1996.
A310–53–2037	1	April 29, 1992.
A310–53–2037, excluding Appendix 01	02	November 27, 2000.
A310–53–2037, excluding Appendix 01	03	July 26, 2006.
A310–53–2041	02	July 2, 1996.

(1) The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 5 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 5.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A310–53–2017	09	May 17, 2004.
A310–53–2030	06	July 2, 1996.
A310–53–2037	1	April 29, 1992.
A310–53–2037, excluding Appendix 01	02	November 27, 2000.
A310–53–2037, excluding Appendix 01	03	July 26, 2006.

Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4, 6, 11–15, 18, 29, 39–44, 46, 57	Revision 1	April 29, 1992.
2, 3, 5, 7–10, 16, 17, 19–28, 30–38, 45,47–56, 58–60	Original	December 11, 1990.

(2) On September 4, 1998 (63 FR 40819, July 31, 1998), the Director of the Federal Register approved the incorporation by reference of the service information listed in Table 6 of this AD.

TABLE 6.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A310–53–2030	5	March 6, 1991.
A310–53–2041	02	July 2, 1996.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10028 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27494; Directorate Identifier 2006–NM–269–AD; Amendment 39–15071; AD 2007–11–14]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

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

ACTION: Final rule.

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

It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.

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

DATES: This AD becomes effective July 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 8, 2007 (72 FR 10429). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.

The MCAI requires replacing the fuel LCU 1 and LCU 2; reworking the LCU 1 and LCU 2 supports; and segregating, replacing, and reworking some harnesses.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the

public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 60 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $6,931 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $23,462, or $11,731 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–14 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15071. Docket No. FAA–2007–27494; Directorate Identifier 2006–NM–269–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category, serial numbers 145484, 145540, 145555, 145706, and 145711.

Subject

(d) Fuel.

Reason

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

It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.

The MCAI requires replacing the fuel LCU 1 and LCU 2; reworking the LCU 1 and LCU 2 supports; and segregating, replacing, and reworking some harnesses.

Actions and Compliance

(f) Within 48 months or 5,000 flight hours after the effective date of this AD, whichever occurs first, unless already done, do the following actions: Replace LCU 1 and LCU 2 by new ones bearing P/N (part number) 367–340–001, rework the LCU 1 and LCU 2 supports, rework and segregate electrical harnesses W102S and W102P, replace harnesses W164 and W221, and route electrical harnesses W1614 and W1620 segregating W1614, according to the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–28–0020, dated February 18, 2005.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, ATTN: Dan Rodina, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they

are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2006–09–05, effective October 18, 2006; and EMBRAER Service Bulletin 145LEG–28–0020, dated February 18, 2005, for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145LEG–28–0020, dated February 18, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

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

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10108 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27340; Directorate Identifier 2006–NM–271–AD; Amendment 39–15072; AD 2007–11–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes, Model DC–10–40 and DC–10–40F Airplanes, and Model MD–10–30F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes. This AD requires installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective July 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes. That NPRM was published in the **Federal Register** on February 26, 2007 (72 FR 8305). That NPRM proposed to require installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 242 airplanes of the affected design in the worldwide fleet. This AD affects about 178 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install bracket assemblies and jumper wires	4	$1,928	$2,248	$400,144
Do electrical resistance measurement	1	None required	80	14,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–15 McDonnell Douglas: Amendment 39–15072. Docket No. FAA–2007–27340; Directorate Identifier 2006–NM–271–AD.

Effective Date

(a) This AD becomes effective July 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes; certificated in any category; as identified in Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Brackets and Jumpers, and Resistance Measurement

(f) Within 60 months after the effective date of this AD, do the actions described in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

(1) Install bracket assemblies and jumper wires between the structure of the lower auxiliary fuel tank and its internal fuel pumps.

(2) Do an electrical resistance measurement between the fuel pump housings and the structure of the lower auxiliary fuel tank.

Corrective Action

(g) If any resistance measurement done in accordance with paragraph (f)(2) of this AD is greater than 2.5 milliohms on either fuel pump housing: Before further flight, rework the electrical bonding between the fuel pump housings and the structure of the lower auxiliary fuel tank as needed to achieve a resistance measurement of 2.5 milliohms or less on both fuel pump housings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles 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) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin DC10–28–245, dated September 19, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10110 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27341; Directorate Identifier 2006–NM–272–AD; Amendment 39–15073; AD 2007–11–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model MD–11 and MD–11F airplanes. This AD requires installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective July 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 5, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all McDonnell Douglas Model MD–11 and MD–11F airplanes. That NPRM was published in the **Federal Register** on February 26, 2007 (72 FR 8311). That NPRM proposed to require installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 195 airplanes of the affected design in the worldwide fleet. This AD affects about 107 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install bracket assemblies and jumper wires	4	$1,928	$2,248	$240,536
Do electrical resistance measurement	1	None required	80	8,560

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–16 McDonnell Douglas: Amendment 39–15073. Docket No. FAA–2007–27341; Directorate Identifier 2006–NM–272–AD.

Effective Date

(a) This AD becomes effective July 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–11 and MD–11F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Brackets and Jumpers, and Resistance Measurement

(f) Within 60 months after the effective date of this AD, do the actions described in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–127, dated September 19, 2006.

(1) Install bracket assemblies and jumper wires between the structure of the lower auxiliary fuel tank and its internal fuel pumps.

(2) Do an electrical resistance measurement between the fuel pump housings and the lower auxiliary fuel tank wall.

Corrective Action

(g) If any resistance measurement done in accordance with paragraph (f)(2) of this AD is greater than 2.5 milliohms on either fuel pump housing: Before further flight, rework the electrical bonding between the fuel pump housings and the lower auxiliary fuel tank wall as needed to achieve a resistance measurement of 2.5 milliohms or less on both fuel pump housings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–127, dated September 19, 2006.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles 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) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin MD11–28–127, dated September 19, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10111 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23270; Airspace Docket No. 05–ANM–16]

Revision to Class E Airspace; Laramie, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the Class E airspace at Laramie, WY. Additional controlled airspace is necessary for the safety of aircraft executing an instrument approach procedure (IAP), and executing a new holding pattern published at Laramie Regional Airport, Laramie, WY. Additionally, this action reflects a change in the airport name from General Brees Field to Laramie Regional Airport.

EFFECTIVE DATE: 0901 UTC, August 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western Service Area Office, 1601 Lind Avenue, SW., Renton, WA 98057–4056; telephone (425) 917–6714.

SUPPLEMENTARY INFORMATION:

History

On August 11, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E Airspace at Laramie, WY (71 FR 46132). This action will provide additional controlled airspace necessary

for the safety of IFR aircraft executing a procedure turn (PT) maneuver as part of the IAP at Laramie Regional Airport. Additional airspace is also necessary to accommodate aircraft executing a new holding pattern published at Laramie Regional Airport, Laramie, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Laramie, WY. Additional airspace is also necessary to accommodate aircraft executing a new holding pattern published at Laramie Regional Airport, Laramie, WY. Additionally, this action reflects a change in the airport name from General Brees Field to Laramie Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

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

* * * * *

ANM WY E5 Laramie, WY [Revised]

Laramie Regional Airport, WY
(Lat. 41°18′43″ N., long. 105°40′30″ W.)
Laramie VORTAC
(Lat. 41°20′16″ N., long. 105°43′15″ W.)
Medicine Bow VOR/DME
(Lat. 41°50′44″ N., long. 106°00′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Laramie Regional Airport, and within 4.8 miles south and 8.3 miles north of the Laramie VORTAC 301 radial extending from the 7.9-mile radius to 16.1 miles northwest of the VORTAC, and within 4.3 miles each side of the Laramie VORTAC 126 radial extending from the 7.9-mile radius to 18.3 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the Medicine Bow VOR/DME southwest to lat. 41°30′00″ N., long. 106°27′00″ W., thence southeast to lat. 41°00′00″ N., long. 105°30′00″ W., thence east along lat. 41°00′00″ N., to long. 105°15′00″ W., thence north to 41°30′00″ N., long. 105°15′00″ W., thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on May 11, 2007.

Clark Desing,

Manager, System Support, Western Service Area.

[FR Doc. E7–10256 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–056]

RIN 1625–AA–09

Drawbridge Operation Regulations; Intracoastal Waterway (ICW); Manasquan River, Brielle, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 35 Bridge, at ICW mile 1.1, across Manasquan River at Brielle, New Jersey. This deviation allows the drawbridge to remain closed-to-navigation from 9:30 p.m. to 11:59 p.m. on July 4, 2007, to facilitate traffic control during the annual fireworks display.

DATES: This deviation is effective from 9:30 p.m. to 11:59 p.m. on July 4, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Route 35 Bridge, a lift drawbridge, has a vertical clearance in the closed position to vessels of 30 feet, above mean high water.

The Point Pleasant Beach Police Department, on behalf of the bridge owner, the New Jersey Department of Transportation, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.733(b) to close the drawbridge to navigation for the sole purpose of motor vehicle traffic control before, during and after the fireworks display that is scheduled for Wednesday, July 4, 2007.

To facilitate traffic control during the 4th of July fireworks display, the Route 35 Bridge will be maintained in the closed-to-navigation position from 9:30 p.m. to 11:59 p.m. on July 4, 2007.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 18, 2007.

Waverly W. Gregory, Jr.

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7–10276 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2005–1 CRB DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule: technical amendment.

SUMMARY: The Copyright Royalty Judges, on behalf of the Copyright Royalty Board of the Library of Congress, are making a technical amendment in the regulation regarding the royalty fees for the public performance of sound recordings and for ephemeral recordings under two statutory licenses to clarify the appropriate Aggregate Tuning Hour usage rate calculation option for the transition period of 2006 and 2007 for non-music programming.

EFFECTIVE DATE: May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. *Telephone:* (202) 707–7658. *Telefax:* (202) 252–3423.

SUPPLEMENTARY INFORMATION: On May 1, 2007, the Copyright Royalty Judges (''Judges'') announced their final determination of the rates and terms for two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning January 1, 2006, and ending on December 31, 2010. 72 FR 24084 (May 1, 2007). The Final Determination included a transition phase for 2006 and 2007 to use Aggregate Tuning Hours (''ATH'') to estimate usage as permitted under the prior fee regime in order to facilitate a smooth transition to the fee structure adopted in the Final Determination. 72 FR 24086. Such ATH usage rate calculation options are set forth in § 380.3(a).

On May 8, 2007, Radio Broadcasters [1] requested the Judges to clarify whether the appropriate ATH usage rate calculation option available for the transition period of 2006 and 2007 was inadvertently misstated because the incorrect starting point was identified for the ''prior fees'' row for non music-programming (i.e., $0.0008 instead of $0.000762). None of the other parties in the proceeding filed any pleading about the request. The Judges considered the Radio Broadcasters' request under their authority in section 803(c)(4) of the Copyright Act, title 17 of the United States Code, which authorizes them to correct ''any technical or clerical errors in the determination * * * that would frustrate the proper implementation of the determination'' and requires them to distribute to the participants of the proceeding such correction and to publish the correction in the **Federal Register**.

After full consideration of the Radio Broadcasters' request, the Judges concluded that such clerical error indeed had been made. Consequently, in accordance with 17 U.S.C. 804(c)(4), the Judges issued an order to the participants in the proceeding acknowledging the clerical error and setting forth the corrected ATH usage rate calculation option available for non-music programming for the 2006–2007 transition period. See Order Regarding Broadcasters' Request for Clarification of the Final Determination of Rates and Terms, Docket No. 2005–1 CRB DTRA (May 21, 2007).

Moreover, as further required by 17 U.S.C. 803(c)(4), the Judges today are amending §§ 380.3(a)(1)(ii) and (a)(2)(iii) to reflect, as set forth in the May 21 Order, the correct ATH usage rate calculation option available for non-music programming for the transition period 2006–2007, which is as follows:

NON-MUSIC PROGRAMMING

Prior Fees	$0.000762 per ATH.
2006	$0.0008 per ATH.
2007	$0.0011 per ATH.

This correction also applies to footnotes 33 and 55 in Sections IV.C.1.d.i. and IV.D.1., respectively, of the Final Determination.

Because this amendment is being made simply for the purpose of correcting a clerical error, the Judges find that there is good cause to make it effective immediately.

[1] Radio Broadcasters include Bonneville International Corp., Clear Channel Communications, Inc., Susquehanna Radio Corp., and The National Religious Broadcasters Music License Committee (''NRBMLC'').

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulation

■ For the reasons set forth in the preamble, 37 CFR part 380 is amended as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f).

§ 380.3 [Amended]

■ 2. Section 380.3 is amended as follows:

■ a. In paragraph (a)(1)(ii), by removing ''$0.0008'' and adding ''$0.000762'' in its place, by removing ''$0.0011'' and adding ''$0.0008'' in its place, and by removing ''$0.0014'' and adding ''$0.0011'' in its place; and

■ b. In paragraph (a)(2)(iii), by removing ''$0.0008'' and adding ''$0.000762'' in its place, by removing ''$0.0011'' and adding ''$0.0008'' in its place, and by removing ''$0.0014'' and adding ''$0.0011'' in its place.

Dated: May 23, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–10366 Filed 5–29–07; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0236; FRL–8315–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from Boilers, Steam Generators and Process Heaters (2.0 MMBtu/hr to 5.0 MMBtu/hr, and 0.075 MMBtu/hr to 2.0 MMBtu/hr); Dryers, Dehydrators, and Ovens; Natural Gas-Fired, Fan-Type

Residential Central Furnaces; and Solid Fuel Fired Boilers, Steam Generators and Process Heaters. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 30, 2007 without further notice, unless EPA receives adverse comments by June 29, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0236, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4307	Boilers, Steam Generators and Process Heaters—2.0 MMBtu/hr to 5.0 MMBtu/hr.	04/20/06	10/05/06
SJVUAPCD	4308	Boilers, Steam Generators and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr.	10/20/05	03/10/06
SJVUAPCD	4309	Dryers, Dehydrators, and Ovens	12/15/05	03/10/06
SJVUAPCD	4352	Solid Fuel Fired Boilers, Steam Generators and Process Heaters	05/18/06	10/05/06
SJVUAPCD	4905	Natural Gas-Fired, Fan-Type Residential Central Furnaces	10/20/05	03/10/06

On March 30, 2006, the submittals of Rules 4308, 4309, and 4905 were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On October 24, 2006, the submittals of Rules 4307 and 4352 were found to meet these completeness criteria.

B. Are there other versions of these rules?

Rules 4308, 4309, and 4905 are new rules submitted to us for the first time. There are no previous versions of Rule 4307 in the SIP, although the SJVUAPCD adopted an earlier version of this rule on December 15, 2005, and CARB submitted it to us on March 10, 2006. We approved a version of Rule 4352 into the SIP on February 11, 1999 (64 FR 6803). The SJVUAPCD adopted revisions to the SIP-approved version on May 18, 2006 and CARB submitted them to us on October 5, 2006. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules and rule revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. The amendments to Rule 4307 are purely administrative, and do no change any emissions reduction requirements. New Rule 4308 requires that small boilers, steam generators and process heaters (0.075 to 2.0 million British thermal units per hour, MMBtu/hr) be certified to meet NO_X emission limits. New Rule 4309 limits NO_X and carbon monoxide (CO) emissions from dryers, dehydrators and ovens with total rated heat input of 5.0 MMBtu/hr or greater. The amendments to Rule 4352 expand the rule's scope to apply to units with potential NO_X emissions of 10 tons per year; the emissions limits have also been strengthened. New Rule 4905 limits NO_X emissions from natural gas-fired, fan-type residential central furnaces with a rated heat input capacity of less than 175,000 Btu/hr, or a rated cooling capacity of less than 65,000 Btu/hr for combination heating and cooling units. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for each category of sources covered by a Control Technique Guideline (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates a ''serious'' ozone nonattainment area (see 40 CFR part 81), so Rules 4307, 4308, 4309, 4352, and 4905 must fulfill RACT. In addition, the San Joaquin Valley is a ''serious'' particulate matter (PM–10) nonattainment area, and is therefore required under section 189(b)(1)(B) and (e) of the Act to implement Best Available Control Measures (BACM) (which includes Best Available Control Technology or BACT) for control of PM–10 precursor emissions, including NO_X.

Guidance and policy documents that we use to help evaluate enforceability and RACT requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' U.S. EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' U.S. EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' California Air Resources Board, July 18, 1991.

5. ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' U.S. EPA, EPA–453/R–94–022, March 1994.

6. ''State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup, and Shutdown,'' U.S. EPA Memorandum to Regional Administrators, September 20, 1999.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, BACM, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA(s current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 29, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 30, 2007. This will incorporate these rules into the federally enforceable SIP.

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.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely 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.*). 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves 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. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 30, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(344)(i)(C) and (347) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(344) * * *

(i) * * *

(C) San Joaquin Valley Unified Air Quality Management District.

(*1*) Rule 4308, adopted on October 20, 2005; Rule 4309, adopted on December 15, 2005; and Rule 4905, adopted on October 20, 2005.

* * * * *

(347) New and amended regulations for the following APCDs were submitted on October 5, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4307, adopted on April 20, 2006; and Rule 4352, adopted on May 18, 2006.

* * * * *

[FR Doc. E7–10236 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2040; MB Docket No. 05–143; RM–11221; RM–11286]

Radio Broadcasting Services; Romney and Wardensville, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Hardy County Broadcast Associates, allots Channel 239A at Wardensville, West Virginia, as the community's first local FM service. Channel 239A can be allotted to Wardensville, West Virginia, in compliance with the Commission's minimum distance separation requirements with at city reference coordinates: 39–04–30 North Latitude and 78–35–53 West Longitude. Because Wardensville is located within the protected areas of the National Radio Astronomy Observatory ''Quiet Zone'' at Green Bank, West Virginia, the successful applicant for Channel 239A at Wardensville will be required to comply with the notification requirement of Section 73.1030(a) of the Commission's rules, 47 CFR 73.1030(a).

DATES: Effective June 25, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–143, adopted May 9, 2007, and released May 11, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Wardensville, Channel 239A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–10360 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061213334–6334–01; I.D. 120806B]

RIN 0648–AV05

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Interim Rule Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim rule extension.

SUMMARY: This action extends interim measures that were implemented by the National Marine Fisheries Service (NMFS) on December 22, 2006, to reduce the potential for overfishing the Atlantic sea scallop (scallop) resource and causing excessive scallop mortality resulting from deck loading by reducing the number of limited access and general category scallop trips to the Elephant Trunk Access Area (ETAA), and prohibiting the retention of more

than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA. This action will extend these interim measures, which were scheduled to expire on June 20, 2007, through December 23, 2007.

DATES: Effective from June 21, 2007, through December 23, 2007.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: On December 22, 2006, the National Marine Fisheries Service (NMFS) implemented an interim final rule (71 FR 76945) that adjusted management measures for the ETAA. The interim action: (1) Reduced the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb); (2) reduced the number of trips from 3 trips to 2 trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels would be increased from 16,800 lb (7,620 kg) per trip to 18,000 lb (8,165 kg) per trip); (3) reduced the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip; (4) reduced the general category scallop fleet ETAA trip allocation from 1,360 trips to 865 trips; (5) delayed the opening of the ETAA from January 1, 2007, to March 1, 2007; and (6) prohibited the retention or deck loading (i.e., leaving a high volume of scallops on deck after leaving an access area so that the scallops can be shucked on the way in) of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA.

The interim action measures superseded measures scheduled to go into effect on January 1, 2007, under Framework 18 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Framework 18). The interim action was enacted in response to findings of the Scallop Plan Development Team (PDT), which advised the New England Fishery Management Council (Council) on November 7, 2006, that reducing the number of trips in the ETAA, delaying the opening, and prohibiting ''deckloading'', would reduce the potential for overfishing the scallop resource in 2007. The Council voted in November 2006, to recommend that NMFS implement interim measures consistent with the PDT's memorandum. On December 22, 2006, NMFS implemented an interim final rule adopting these recommendations. This interim final rule was scheduled to expire on June 20, 2007.

If the interim action expired, measures in Framework 18 would become effective, an increase in the number of trips and deck loading scallops in the ETAA would occur, and the benefits of the interim action would be lost. To ensure the interim action prevents or reduces overfishing for the 2007 fishing year, extension of the interim rule is necessary. This extension will keep measures in place through December 23, 2007. Since the 2007 fishing ends on February 29, 2008, the Council has initiated Framework Adjustment 20 that would extend the interim measures through February 29, 2008.

Interim Measures

1. ETAA Trip Reduction

This interim rule extension maintains the reduction in the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit remains at 18,000 lb (8,165 kg)); the reduction in the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels remains at 16,800 lb (7,620 kg) per trip); and the reduction in the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip. The regulations at § 648.60(a)(5) published for Framework 18 specified that an occasional vessel's possession limit is 7,500 lb (3,402 kg) per trip. However, Framework 18 intended and analyzed a possession limit of 10,500 lb (4,763 kg) per trip for the 2007 FY. This interim rule extension also maintains the reduction in the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA

Reducing the number of trips for scallop vessels in the ETAA addressed the concern that overfishing of the scallop resource may occur in 2007. Although the biomass in the ETAA remains very high relative to the rest of the scallop resource, it is less abundant than was projected in Framework 18. As a result, even though the fishing mortality is expected to be lower than the target fishing mortality in the area, it would be high enough at the lower biomass to contribute to overfishing in 2007. Part-time vessels have a trip reduction with an increase in the possession limit to ensure that the total access area catch for part-time vessels remains at 40 percent of the full-time access area catch, as intended by the FMP. Occasional vessels have one trip to any access area, but have a possession limit of 7,500 lb (3,402 kg) for the trip, ensuring that the total access area catch for occasional vessels remains at 8.3 percent of the full-time access area catch. Reducing trips in the ETAA was contemplated in Framework 18 and the potential impacts of the trip reductions were fully analyzed in Framework 18.

2. Delayed Opening of the ETAA

This interim rule extension maintains the provision that delayed the opening of the ETAA from January 1, 2007, until March 1, 2007. The delayed opening prevented vessels from harvesting scallops in the ETAA before they gained meat-weight during January through February. Following spawning in the fall months, scallops undergo a period of recovery when the meats increase in size and weight. Harvesting scallops at a higher meat-weight improves scallop yield, resulting in lower mortality, since fewer scallops need to be caught to meet the poundage possession limits. In addition, with three trips per vessel, one of the original reasons for opening the ETAA on January 1, 2007, (i.e., to spread the five allocated trips over a longer period) is no longer supported. The March 1, 2007, opening was also contemplated in Framework 18. The new information provided by the Council demonstrates that the delay was necessary, along with the trip reductions, to reduce overfishing in 2007.

3. Prohibition on Deckloading

This interim rule extension maintains the prohibition on the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA for vessels on Access Area trips. Deckloading is the practice of loading the deck of a vessel with the scallop catch from several tows. Under the current Access Area regulations, vessels can deckload and leave the area, and the vessel crews can spend the time steaming home, sorting and shucking scallops, thereby reducing overall trip costs. This can result in a vessel having more scallops on board than are necessary to achieve the possession limit. The excess scallops are discarded. In addition, due to deckloading, scallops remain on deck longer, increasing discard mortality. In the ETAA, deckloading may cause even higher scallop mortality, since catch rates are expected to be very high, there is a mix of scallop sizes in the area, and scallop crews may discard smaller scallops in favor of larger scallops. Although the amount of additional mortality cannot be estimated, prohibiting deckloading on ETAA trips is a complementary measure that will help prevent additional scallop mortality.

Comments and Responses

Comment 1: Two commenters offered strong support for the interim action.

Response: Comment noted.

Comment 2: One commenter noted that NMFS '' should have seen the [ETAA] issue coming.''

Response: Framework 18 included a mechanism to adjust the ETAA trips. The Council and NMFS included the provision to adjust ETAA measures in the event that the biomass estimates were overestimated in Framework 18 initially. The Framework 18 mechanism was determined to be not as effective as the interim action in addressing the uncertainty in the projections, but the issue was anticipated.

Classification

Because this interim rule merely extends the interim action already in place, for which public comment was accepted and considered, NMFS finds it is impracticable and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the interim rule. Waiving prior notice and comment allows the ETAA interim measures to remain in place, thereby reducing the potential for overfishing the scallop resource and preventing excessive scallop mortality. For these reasons, the need to extend these measures to assure that overfishing does not occur also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delayed effective date, and extend the interim action upon publication. This interim rule has been determined to be not significant for purposes of Executive Order 12866. This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Dated: May 23, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–10370 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061127309–7100–02; I.D. 110706D]

RIN 0648–AU72

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Reporting Requirements and Conservation Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action implements new reporting and conservation measures under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The purpose of this action is to prevent interactions between CPS fisherman and southern sea otters, as well as establish methods for fishermen to report these occurrences when they occur. These reporting requirements and conservation measures require CPS fishermen/vessel operators to employ avoidance measures when southern sea otters are present in the area they are fishing and to report any interactions that may occur between their vessel and/or fishing gear and sea otters.

DATES: Effective June 29, 2007, except for § 660.520 which contains information collection requirements that have not been approved by OMB. NOAA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Copies of Amendment 11 and its Environmental Assessment/ Regulatory Impact Review may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted to the Southwest Regional Office and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395–7285

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), regulates commercial fishing for CPS in the Exclusive Economic Zone (EEZ) off the West Coast; 3–200 nautical miles off the coastlines of Washington, Oregon, and California. This action implements new reporting requirements and conservation measures under the CPS FMP. Southern sea otters are listed as threatened under the Endangered Species Act (ESA) and depleted under the Marine Mammal Protection Act (MMPA), providing them strict protection under these laws. Known interactions between CPS fishing operations and southern sea otters are extremely rare. Data gathered from this action will prove valuable in determining whether such interactions are as rare as believed or whether stronger measures are necessary to ensure protection of this species. This action stems from a biological opinion (BO) issued by the U.S. Fish and Wildlife Service (USFWS) regarding the implementation of Amendment 11 to the CPS FMP.

Background

In accordance with the regulations implementing the ESA, NMFS initiated an ESA section 7 consultation with the USFWS regarding the possible effects of implementing Amendment 11 (71 FR 36999) to the CPS FMP. USFWS determined that formal consultation was necessary on the possible effects to the threatened southern sea otter. USFWS completed a biological opinion (BO) for this action and concluded that it was not likely to jeopardize the continued existence of the southern sea otter. The requirements and conservation measures put forth in this action stem from this BO and are an attempt to provide further conservation efforts for southern sea otters. These reporting requirements and conservation measures require all CPS fishermen and vessel operators to employ avoidance measures when sea otters are present in the fishing area and to report any interactions that may occur between their vessel and/or fishing gear and otters.

Specifically, these new measures and regulations are:

1. CPS fishing boat operators and crew are prohibited from deploying their nets if a southern sea otter is observed within the area that would be encircled by the purse seine.

2. If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, such an occurrence must be reported within 24 hours to the Regional Administrator, NMFS Southwest Region.

3. While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which will be initially reported as described in #2 above, all other observations must be reported within 20 days to the Regional Administrator.

When contacting NMFS after an interaction, fishermen are required to provide information regarding the location, specifically latitude and longitude, of the interaction and a description of the interaction itself. If available, location information should also include: Water depth; distance from shore; and, relation to port or other landmarks. Descriptive information of the interaction should include: whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; did contact occur with net or vessel; the number of otters present; duration of interaction; otter's behavior during interaction; and, measures taken to avoid interaction.

For further background information on this action please refer to the preamble of the proposed rule (71 FR 70941).

Comments and Responses

NMFS received two public comments on the proposed rule. These comments are addressed here:

Comment 1: One comment stated that due to the strict protections provided to southern sea otters by the MMPA, incidental take of southern sea otters could not be authorized under the ESA and that it was necessary for NMFS to amend the proposed rule to reflect this. The comment also stated that self-reporting has not always proved effective with regard to marine mammal interactions with fisheries and that this rule should include a mandatory neutral observer program. However, to the extent that self-reporting would be required, that it be made as easy as possible for the fishermen.

Response: This final rule does not authorize the take of southern sea otters within CPS fisheries. The purpose of this final rule is to further protect this threatened species. Sea otters have not been documented to have been injured or killed in CPS fisheries and due to the very small overlap of CPS fisheries in the EEZ off the West Coast and the distribution of southern sea otters, the likelihood that such an event will occur is low. However, the BO prepared by USFWS determined that the possibility of interactions between sea otters and the fishery does exist. Therefore, NMFS decided that the requirements recommended by USFWS to reduce possible interactions with, and provide protection for, southern sea otters, would be a prudent conservation measure. NMFS currently places observers on CPS vessels operating in the Monterey Bay region and will continue to do so.

Comment 2: The commenter stated that after an interaction it would be unnecessary for the fisherman to provide location information other than latitude and longitude. The commenter also suggests that the requirement to report non-entanglement interactions is unclear and unnecessary.

Response: Under § 660.520(a)(3), fishermen will only be required to provide the latitude and longitude of where the interaction took place. NMFS asks that other location information that is readily available be provided as well, but it is not required. With regards to the reporting of non-entanglement interactions, it is not the intent of this final rule to require fishermen to report casual observations of sea otters. This action only requires fishermen to report when sea otters occur within encircled nets or come into contact with fishing gear or the vessel. This information could prove valuable to both fishermen and/or the conservation of sea otters as it will establish a record of the presence or absence of sea otter interactions. If interactions are occurring, location information will be important in determining areas where further conservation efforts may be needed.

No changes were made to the regulatory text from the proposed rule.

Classification

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final 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. Public reporting burden for this otter interaction requirement is estimated to average 10 minutes per individual per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail 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, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 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 amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.505, paragraph (n) is added to read as follows:

§ 660.505 Prohibitions.

* * * * *

(n) When fishing for CPS, deploy a net if a southern sea otter is observed within the area that would be encircled by the purse seine net.

■ 3. Section 660.520 is added to read as follows:

§ 660.520 Reporting requirements.

(a) *Otter interaction.* (1) If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, the vessel operator must report this interaction within 24 hours to the Regional Administrator.

(2) While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which must be initially reported as described in paragraph (a)(1)of this section, all other observations must be reported within 20 days to the Regional Administrator.

(3) When contacting NMFS after an interaction, vessel operators must provide the location (latitude and longitude) of the interaction and a description of the interaction itself. If available, location information should also include water depth, distance from shore, and relation to port or other landmarks. Descriptive information of the interaction should include: whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; whether any otters came in contact with either the net or the vessel; the number of otters present; duration of interaction; the otter's behavior during interaction; measures taken to avoid interaction.

(b) [Reserved]

[FR Doc. E7–10379 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XA45

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 27, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., June 8, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail *inseason-akr@noaa.gov* and include in the subject line and body of the e-mail the document identifier: bspclt60re2 (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI under § 679.20(d)(1)(iii) on March 30, 2007 (72 FR 15848, April 3, 2007). The fishery was reopened on April 30, 2007 (72 FR 18920, April 16, 2007) and was closed again on May 15, 2007 (72 FR 27980, May 18, 2007).

NMFS has determined that as of May 22, 2007, approximately 30 metric tons of Pacific cod remain in the 2007 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Therefore, in accordance with § 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully use the 2007 TAC of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. The opening is effective 1200 hrs, A.l.t., May 27, 2007, through 2400 hrs, A.l.t., December 31, 2007.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 22, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until June 8, 2007.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 23, 2007.

James P. Burgess

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–2674 Filed 5–24–07; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 103
Wednesday, May 30, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28157; Directorate Identifier 2007–CE–046–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.

It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of upper attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 29, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28157; Directorate Identifier 2007–CE–046–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because 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 we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No: 2007–0114, dated May 2, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.
>
> It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of upper attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane. In order to correct and monitor this situation, the present AD mandates a one-time inspection of the wing strut fittings and replacement of damaged wing strut fittings with new ones. This AD also requires examination of the spherical bearings installed in the wing strut fittings and their replacement for bearings that do not pass the examination criteria.

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

Relevant Service Information

Pilatus Aircraft Ltd. has issued Service Bulletin No. 57–004, dated April 16, 2007. The actions described in this service information are intended to

correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 50 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $28,000, or $560 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $2,500 for a cost of $3,700 per fitting or $7,400 per product if both fittings are replaced. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2007–28157; Directorate Identifier 2007–CE–046–AD.

Comments Due Date

(a) We must receive comments by June 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PC–6, PC–6-H1, PC–6-H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes; manufacturer serial numbers (MSN) 101 through 951, and MSN 2001 through 2092; that are certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the upper wing strut fittings of some PC–6 aircraft.

It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks in this area could lead to failure of upper attachment fitting. This could result in the failure of the wing structure with subsequent loss of control of the airplane.

In order to correct and monitor this situation, the present AD mandates a one time inspection of the wing strut fittings and replacement of damaged wing strut fittings with new ones. This AD also requires examination of the spherical bearings installed in the wing strut fittings and their replacement for bearings that do not pass the examination criteria.

Actions and Compliance

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

(1) *For MSN 2001 through MSN 2092:* Within the next 100 hours time-in-service (TIS) on the upper wing strut fitting after the effective date of this AD or within 3 months after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD.

(2) *For MSN 101 through MSN 951* do the following actions, as applicable:

(i) If the upper wing strut fitting has less than 3,500 hours TIS or has been installed for less than 84 months (7 years): Within the next 1,000 hours TIS on the upper wing strut fitting after the effective date of this AD or within 24 months after the effective date of this AD without exceeding 3,600 hours TIS

or 87 months (7 years, 3 months), whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD, or;

(ii) If the upper wing strut fitting has 3,500 or more hours TIS or has been installed for 84 months (7 years) or longer: Within the next 100 hours TIS on the upper wing strut fitting after the effective date of this AD or within 3 months after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 12 months, do the actions specified in paragraph (f)(3) of this AD.

Note 1: If the TIS of the upper wing strut fittings cannot be positively determined by a review in the airplane maintenance records, then by default the upper wing strut fittings were installed from the date of original Certificate of Airworthiness.

(3) Do the following at the times specified in paragraph (f)(1) or (f)(2) of this AD:

(i) Perform a visual and non-destructive inspection of the upper wing strut fittings for cracks following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

(ii) Examine for conformity the spherical bearings following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

(4) If during any inspection required by paragraph (f)(3)(i) of this AD, cracks are found in the upper wing strut fitting, before further flight replace the wing strut fitting with a new part number (P/N) 111.35.06.185 (left side) or P/N 111.35.06.186 (right side) following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007. Replacement of the upper wing strut fitting does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

(5) If during any inspection required by paragraph (f)(3)(ii) of this AD, the spherical bearing is found not in conformity, replace the bearing with a new P/N 944.61.00.109 following the Accomplishment Instructions in Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007. Replacement of the spherical bearing does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

(6) Report to Pilatus Aircraft Ltd. Customer Liaison Manager results of the inspection/examination using Table 1 of Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007.

FAA AD Differences

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

(1) The FAA AD is requiring repetitive inspections and reporting results to the manufacturer, not just a one-time inspection and report as required in the MCAI.

(2) The Service Bulletin specifies ''subsequent inspections for cracks will be included in Chapter 5 of the Aircraft Maintenance Manual (AMM).'' The only way we (FAA) can mandate these repetitive inspections is through an AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No: 2007–0114, dated May 02, 2007; and Pilatus Aircraft Ltd. Service Bulletin No. 57–004, dated April 16, 2007, for related information.

Issued in Kansas City, Missouri, on May 23, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10315 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0540; FRL–8319–7]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve Indiana's oxides of nitrogen (NO_X) rules which satisfy the requirements of EPA's NO_X SIP Call Phase II Rule (the Phase II Rule). We are proposing to approve these rules based on Indiana's demonstration that the State will meet the Phase II Rule requirements through rules regulating stationary internal combustion (IC) engines. Limiting NO_X emissions from IC engines will enable the State to meet the Phase II budget of 4,244 tons during the ozone season, thereby improving air quality and protecting the health of Indiana citizens. We are also proposing to approve other changes to Indiana's NO_X rules. These are minor clerical corrections and changes in definitions made by Indiana to conform to EPA's Phase II Rule. Citizens who wish to comment on this proposed approval of the Indiana Phase II NO_X plan are encouraged to do so within the timeframe noted below.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0540, 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–2006–0540. 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 John Paskevicz, Engineer, at (312) 886–6084 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U. S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084, *paskevicz.john@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. Background
III. Who is affected by the new Phase II rule and the amendments to the Phase I rules?
IV. What would approval of this rule accomplish?
V. How are owners and operators expected to comply with the new requirement?
VI. What action is EPA taking today?
VII. Statutory and Executive Order Reviews.

I. What should I consider as I prepare my comments for EPA?

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. Background

On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call in which it required 22 states, including Indiana, to prepare plans to reduce the transport of ozone throughout the eastern part of the United States. This was to be accomplished by reducing emissions of NO_X from selected source categories, primarily major fuel burning sources, using available cost-effective measures. The rule established a cap on emissions of NO_X from each state. States had flexibility in determining which fuel burning sources were to be included in their rules. For the most part, states targeted NO_X reductions from electric utilities and other large industrial boilers, cement kilns, and IC engines as sources which could be controlled in a cost-effective manner. Background information in this regard is available from documents prepared by EPA, and can be found at *http://www.epa.gov/ttn/rto/otag/index.html.*

Some states and industry challenged the rule. In *Michigan* v. *EPA,* 213 F.3d 663 (D.C.Cir. 2000), *cert. denied,* 121 S. Ct. 1225 (2001), the Court largely upheld EPA's rulemaking. It did, however, remand a portion of the rule concerning IC engines to EPA for further notice and public comment.

Subsequent to the Court's decision, EPA proceeded initially with rules concerning electric generating units (EGU), industrial boilers (non-EGU) and cement kilns as Phase I sources. The IC engines fell into the Phase II group, to be addressed at a later date. Indiana adopted its Phase I rules and submitted them to EPA. We approved the Phase I rules on November 8, 2001 (66 FR 56465).

On April 21, 2004 (69 FR 21603), EPA issued the Phase II Rule. It required most States with Phase I budget programs to submit a Phase II plan to achieve incremental reductions not addressed by Phase I rules. The Phase II Rule also included amendments to the Phase I rules affecting definitions for EGUs, and identified the additional NO_X budget reductions (incremental reductions) that would be required by regulating large (greater than one ton per day emissions) IC engines. The amount of incremental reductions required resulted from the re-calculation of the overall budget to reflect a control level of 82 percent from natural gas-fired lean-burn IC engines with greater than one ton per day NO_X emissions. IDEM drafted the new rule (326 IAC 10–5, NO_X Reduction Program from IC Engines) based on guidance from EPA dated September 19, 2004, which contained an example model rule. The State also made some clerical changes to 326 IAC 10–3 and 10–4 as fix-ups to IDEM's existing NO_X SIP.

The public process for the State's IC engine rule started on May 4, 2005, and ended on October 5, 2005. The Indiana Air Pollution Control Board (IAPCB) adopted the rules and they became effective on February 26, 2006. New rule 326 IAC 10–5 applies to any person who owns or operates a large reciprocating stationary IC engine that emits more than one ton of NO_X per day during the ozone season. At the time of the State rulemaking, the only two subject Indiana companies were ANR Pipeline and Panhandle Eastern Company, which operate most of the gas-fired engines in the State. These companies own a total of 17 large lean-burn engines and many smaller engines throughout the State serving compressor stations located on pipelines that transport natural gas to customers.

The IAPCB also adopted minor changes to its Phase I rules in 326 IAC 10–3 and 10–4, to conform to changes EPA had made to its rule.

On March 8, 2006, the Indiana Department of Environmental Management (IDEM) submitted its Phase II rules to EPA. IDEM sent additional follow-up information addressing the budget demonstration for this source category in a June 22, 2006, letter requesting EPA approval. IDEM also

asked in this submittal for EPA to approve the minor changes to the Phase I NO_X rules. The State's budget demonstration, which contains enforceable emission limits for Indiana IC engines, uses the information in the source compliance plans to conclude that these sources will meet the incremental reduction called for in the Phase II Rule.

The overall NO_X budget for Indiana was originally calculated using emissions data from base year 1995. This number was based on the assumption that IC engines would be controlled at a highly cost-effective (90 percent) control level. However, the Court ruled in *Michigan* v. *EPA* that EPA had failed to provide adequate notice of the 90 percent control level assumed for IC engines. In the original proposed rule, EPA had proposed a range of control levels from 82 to 91 percent for the IC engine portion of the budget. As a result of the Court's decision, EPA set the control level at 82 percent for gas-fired lean-burn engines and recalculated the budget. The recalculation resulted in an overall budget number which for most states is smaller than the budget published by EPA on March 2, 2000. The incremental difference is the target reduction which Indiana is required to (and expects) to achieve with the Phase II Rule.

In the Phase II Rule, EPA calculated the 2007 base year emissions inventory from which Indiana needed additional reductions of 4,244 tons per ozone season, based upon achieving an 82 percent reduction at all IC engines in Indiana with greater than one ton per day of NO_X emissions. EPA allows states flexibility to use company-wide emissions averaging to achieve the needed emissions reductions. (See August 22, 2002 memorandum from Lydia Wegman, Director, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, to EPA Air Division Directors). EPA's example model rule is sufficiently flexible to allow companies with multiple affected engines to comply using a specific emission rate limit for each engine listed in the source compliance plan. (see *http://epa.gov/ttncaaa1/t1/reports/23814qnaasfin.pdf;* undated memorandum, Phase II of the NO_X SIP Call: Q&As and Example Rule). Emission rate limits must be reflected in a Federally enforceable permit, the enforcement mechanism for the compliance plan, which shows that the control measures are adequate to meet the State's Phase II budget incremental difference.

The Indiana rule requires sources to show that the emission reductions associated with a source will meet the facility seasonal NO_X tonnage reduction assigned to the source. Sources are required to project 2007 base emissions and then show the emissions reductions associated with the control technology or other reduction methodology (engine replacement, for example). The Indiana budget demonstration shows that sources will meet the required seasonal tonnage reductions by reducing emissions from various other engines in the inventory, so that the overall reductions are equivalent to achieving 82 percent reductions on IC engines with greater than one ton per day NO_X emissions. Some of the engines use combustion modification and some engines have been replaced with newer engines. Demonstrated reductions resulting from the replacement of older engines with newer engines in some cases exceeds 82 percent. More importantly, the compliance plans for the two companies, as noted in the Indiana budget demonstration, show that the sources meet the NO_X SIP Call emission reductions specified for Indiana.

III. Who is affected by the new Phase II rule and the amendments to the Phase I rules?

New rule 326 IAC 10–5 applies to any person who owns or operates a large stationary reciprocating IC engine and other smaller stationary IC engines that are included in a compliance plan. A large IC engine is defined as an engine that emits more than one ton of NO_X per ozone season day, based on operation during the 1995 ozone season. Pipeline energy companies are the major users of large IC engines and the State developed its budget demonstration based on control of engines used in this energy transport industry.

The minor amendments to 326 IAC 10–3 and 326 IAC 10–4 clarify regulatory language and correct various clerical errors. They also incorporate changes applicable to EGUs and non-EGUs, made in accordance with EPA's Phase II Rule, including the definitions of ''EGU'' and ''non-EGU'' as applied to co-generation units.

IV. What would approval of this rule accomplish?

Approval of rule 326 IAC 10–05 will provide a means by which the State of Indiana will meet the required reductions of NO_X emissions from IC engines during the ozone season. The State rule affects NO_X SIP Call IC engines as well as any other stationary IC engine subject to NO_X control in the State's rule. The emission reductions for some large engines will be permanent and year-round resulting from low emission combustion measures retrofitted to existing engines. Low emission combustion measures cannot be cycled off once the changes are made to the engine. The combustion control technology is a permanent, physical change to the design and operation of the engine which, when implemented, is expected to reduce emissions of NO_X year-round. A source subject to these rules may achieve the required reductions through a facility-wide or State-wide averaging program approved by Indiana. The State's rules include provisions which the sources must follow to demonstrate compliance with the rules. The environmental benefits and health implications are expected to be permanent.

The amendments to the plan also make clarifying clerical and formatting corrections to previously approved rules 326 IAC 10–3 and 326 IAC 10–4. They incorporate changes contained in EPA's Phase II Rule applicable to EGUs and non-EGUs, including the definitions of ''EGU'' and ''non-EGU'' as applied to co-generation units. These amendments will bring the originally approved Phase I NO_X State rules into conformance with the Clean Air Act (CAA) and current EPA requirements.

V. How are owners and operators expected to comply with the new requirement?

Owners of large IC engines were required to submit to IDEM, by May 1, 2006, compliance plans showing how the companies will meet the emission reductions in their respective systems. The State's budget demonstration shows that the owners of the large NO_X SIP Call engines will reach the required reductions by reducing emissions from all of the engines in their respective systems and not just from the large, one-ton-per-day, engines. These reductions shown in the budget demonstration are taken from the compliance plans submitted to IDEM by the two companies currently subject to the rule, and must be achieved by May 1, 2007. The applicable emission rate, along with monitoring, record keeping and reporting requirements, must be incorporated into Federally enforceable State permits to be issued to the companies. As public documents, these permits and compliance reports can be viewed by the public to verify compliance with the State's plan.

Known subject sources have met the first increment of compliance by submitting to the State of Indiana compliance plans as required by rule. The next major increment is completion of the requirements listed in the source

plans which bring the sources into compliance. This step, which includes the application of low emission technology (or other controls) or source averaging or both, must be completed by May 2007.

EPA published the incremental budget for affected States, including Indiana, in the April 21, 2004, **Federal Register** (69 FR 21604). The State's budget demonstration shows that, through the use of low emission combustion technology, installation of new units to replace old engines, and the use of averaging NO_X emissions system-wide by the two companies identified above, the State will be able to reduce emissions of NO_X to meet the Phase II incremental difference of 4244 tons of NO_X for the ozone season.

The State rule 326 IAC 10–5–3 includes a requirement that an owner or operator of a large IC engine shall not operate an affected engine during the ozone period unless there is a compliance plan which meets the requirements of the rule. The compliance plan was required to be submitted to the State by May 1, 2006, and the rules prohibit operation of affected engines after May 1, 2007, if they are not in compliance with the requirements. Included in the compliance plan is a requirement that the projected NO_X emissions from the engine, in grams per break horsepower-hour, be included in a Federally enforceable permit. This information will enable the State to determine if reductions from the covered sources should meet the Phase II budget increment. The failure of a source to meet the required NO_X reductions is a violation of the provisions of the permit. The State of Indiana is expected to determine non-compliance with its rules by reviewing monitoring and testing information submitted by the owners and operators of the affected engines. In addition, because the compliance plan will be included in Federally enforceable permits, EPA has the authority to enforce the applicable provisions.

VI. What action is EPA taking today?

EPA is proposing to approve the Phase II NO_X rules submitted by the State. We are taking this action because we have determined that the rules satisfy the requirements of the CAA and the Phase II Rule. The State has shown, through its budget demonstration, that it can achieve the Phase II budget increment through source compliance with the State's rules affecting IC engines and the State's permitting program. Meeting the Phase II budget increment and the Phase I increment means the State will meet its total overall ozone season NO_X budget and bring about reductions in ozone concentrations in the State and downwind from Indiana. EPA is also proposing to approve other changes to Indiana's NO_X SIP. These other changes are minor clerical corrections and changes in definitions to conform to the changes made by EPA in the NO_X Phase II Rule. Citizens who wish to comment on this proposed approval of the Indiana plan are encouraged to do so within the timeframe noted in the front of this action.

VI. 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 CAA.

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 CAA. 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 CAA. Therefore, the

requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 18, 2007.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E7–10317 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0236; FRL–8316–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from Boilers, Steam Generators and Process Heaters (2.0 MMBtu/hr to 5.0 MMBtu/hr, and 0.075 MMBtu/hr to 2.0 MMBtu/hr); Dryers, Dehydrators, and Ovens; Natural Gas-Fired, Fan-Type Residential Central Furnaces; and Solid Fuel Fired Boilers, Steam Generators and Process Heaters. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 29, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0236, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *Http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SJVUAPCD Rules 4307, 4308, 4309, 4352, and 4905. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 30, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–10238 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0175; FRL–8319–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Reading Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Reading, Berks County, Pennsylvania ozone nonattainment area (Reading Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Reading Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Reading Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation and that amends the existing 1-hour ozone maintenance plan for the Reading Area. EPA is proposing to make a determination that the Reading Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Reading Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Reading Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Reading Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve.

EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before June 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0175 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: miller.linda@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0175, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0175. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

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I. What Actions Are EPA Proposing To Take?

On January 25, 2007, PADEP formally submitted a request to redesignate the Reading Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on January 25, 2007, PADEP submitted a maintenance plan for the Reading Area as a SIP revision to ensure continued attainment of the 8-hour NAAQS for at least 10 years after redesignation and continued attainment of the 1-hour ozone NAAQS until 2018. PADEP submitted a supplement to the technical support for the maintenance plan on April 12, 2007. (Hereafter, when we say the maintenance plan was submitted on January 25, 2007 we mean that it submitted on January 25, 2007, with a supplement submitted on April 12, 2007.) PADEP also submitted a 2002 base year inventory as a SIP revision on January 25, 2007. The Reading Area is currently designated as a basic 8-hour ozone nonattainment area and is covered by a maintenance plan for the 1-hour NAAQS. EPA is proposing to determine that the Reading Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Reading Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Reading Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Reading Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Reading Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Reading Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Reading Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003. On April 30, 2004, EPA

issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Reading Area (as well as most other areas of the country) effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C.Cir. 2006) (hereafter ''*South Coast.*''). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The Reading Area Has Met All Applicable Requirements under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Reading Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, Reading Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2003–2005 indicates that the Reading Area has a design value of 0.080 ppm. Therefore, the ambient ozone data for the Reading Area indicates no violations of the 8-hour ozone standard.

B. The Reading Area

The Reading Area consists solely of Berks County, Pennsylvania and was designated as basic 8-hour ozone nonattainment status in an April 30, 2004 Final Rule (69 FR 23857). Prior to its designation as an 8-hour basic ozone nonattainment area, the Reading Area was designated an incomplete data nonattainment area for the 1-hour standard. See 56 FR 56694 at 56822, November 6, 1991. Prior to its designation as an 8-hour ozone nonattainment area, the Reading Area had been designated and classified as a moderate ozone nonattainment area for the 1-hour standard. See 56 FR 56694 at 56822, November 6, 1991. On May 7, 1997 (62 FR 24826), EPA approved a request to redesignate the Reading area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision.

On January 25, 2007, PADEP requested that the Reading Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Reading Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief,

Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

• ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

• ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

• ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;

• ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

• ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993

• Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

• ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On January 25, 2007, PADEP requested redesignation of the Reading Area to attainment for the 8-hour ozone standard. On January 25, 2007, PADEP submitted a maintenance plan for the Reading Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Reading Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Reading Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Reading Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY

[Rounded to one decimal place]

Year	VOC	NO_X
2009	13.1	21.3
2018	7.5	9.0

VI. What Is EPA's Analysis of the State's Request and SIP Revision?

EPA is proposing to determine that Reading Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP's January 25, 2007, submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Reading Area Has Attained the Ozone NAAQS

In the Reading Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2003–2005 (the most recent three years of data available as of the time of the redesignation request) for the Reading Area. This data has been quality assured and is recorded in AQS.

Based upon this data, EPA is proposing to determine that the Reading Area has attained the 8-hour ozone NAAQS. For the 8-hour ozone standard, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2A.

TABLE 2A.—READING NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR OZONE VALUES; UGI CO MONGANTOWN RD AND PROSPECT ST READING BERKS CO, AQS ID 42–011–0009

Year	Annual 4th high reading (ppm)
2003	0.080
2004	0.076
2005	0.085

The average for the 3-year period 2003 through 2005 is 0.080 ppm.

The air quality data for 2003–2005 show that the Reading Area has attained the standard with a design value of 0.080 ppm. The data collected at the Reading Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP's request for redesignation for the Reading Area indicates that the data was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. EPA believes this conclusion remains valid that after review of the quality assured 2006 data because the design value for 2004–2006 would be 0.079 ppm. In summary, EPA has determined that the data submitted by Pennsylvania and

taken from AQS indicates that Reading Area has attained the 8-hour ozone NAAQS.

Based upon the ozone monitoring data for the years 2003–2005, EPA believes that the Reading Area is still in attainment for the 1-hour ozone NAAQS. For the 1-hour ozone standard, an area may be considered to be attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. Compliance is determined on a monitor-by-monitor basis within the area. To demonstrate attainment, i.e., compliance with this standard, the annual average of the number of expected exceedances of the 1-hour standard over a 3-year period must be less than or equal to 1. (To account for missing data, adjustment of the actual number of monitored exceedances of the standard yields the annual expected number of exceedances at an air quality monitoring site.) Table 2B provides a summary of the number of expected exceedances for each of the years 2003 through 2005 and three-year annual average.

TABLE 2B.—READING NONATTAINMENT AREA NUMBER OF EXPECTED EXCEEDANCES OF THE 1-HOUR OZONE STANDARD; UGI CO MONGANTOWN RD AND PROSPECT ST READING BERKS CO, AQS ID 42–011–0009

Year	Number of expected exceedances
2003	1.0
2004	0.0
2005	0.0

The average number of expected exceedances for the 3-year period 2003 through 2005 is 0.3.

In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Reading Area is maintaining air quality that conforms to the 1-hour ozone NAAQS. EPA believes this conclusion remains valid after review of the quality assured 2006 data because no exceedances were recorded in the Reading Area in 2006.

B. The Reading Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Reading Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The

transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Reading Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings, (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification.

Under an April 30, 2004, final rule (69 FR 23951), EPA classified the Reading Area as a subpart 1 nonattainment area under the 8-hour ozone standard. EPA believes that no subpart 1 requirements need to be approved prior to redesignation. Of the nonattainment plan provisions due under section 172, none were due prior to redesignation because EPA's November 29, 2005 final rule (70 FR 71612) set the deadline for these requirements at 3 years after resignation which for the Reading Area is June 15, 2007.

With respect to the 8-hour standard, the Court's ruling in *South Coast* rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Reading Area was classified under Subpart 1 and was obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also,* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; 68 FR 25418, at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, see *Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to subpart 2 requirements, if the Reading Area initially had been classified under subpart the first two part D subpart 2 requirements applicable to the Reading Area under section 182(a) of the CAA would be: (1) A base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, (2) the emissions statement requirement pursuant to section 182(a)(3)(B) of the CAA.

As we have stated previously in this document, these requirements are not yet due for purpose of redesignation of the Reading Area, but nevertheless, Pennsylvania already has in its approved SIP an emissions statement rule for the 1-hour standard which covers all portions of the Reading Area and which EPA believes satisfies the emissions statement requirement for the 8-hour standard under section 182(a)(3)(B). This regulation is codified at Section 135.21 ''Emission statements'' in Chapter 135 of 40 CFR 52.2020(c)(1); see also 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base year inventory SIP concurrently with the maintenance plan as fulfilling the requirements, if

necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the CAA. In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. See *Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995).

In the case of the Reading Area, EPA has also determined that before being redesignated, the Reading Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' See rulemakings for Detroit, Michigan (60 FR at 12467–68); Cleveland-Akron-Lorrain, Ohio (61 FR at 20458, 20469–70); Louisville, Kentucky (66 FR 53665, 53669 October 23, 2001); Grand Rapids, Michigan (61 FR at 31831, 31834–37, June 21, 1996). In the case of the Reading Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a subpart 1/basic 8-hour ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Reading Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rational for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Reading Area by virtue of the area's designation and classification. Rather, section 184 measures are required in the Reading Area because it is located in the OTR. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

As stated previously in this document, on May 7, 1997 (62 FR 24826), EPA approved a request to redesignate the Reading Area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision. In order to redesignate the area to attainment of the 1-hour ozone standard, EPA determined that Pennsylvania had fulfilled all Part D requirements applicable to the Reading Area as a consequence of its classification as a moderate ozone nonattainment. See Reading final (62 FR 24826, May 7, 1997) and proposed rules (61 FR 53174, October 10, 1996).

With respect to the requirements under the 1-hour standard, the Reading Area was an attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's ruling in *South Coast* does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests, including the requirement to submit a transportation conformity SIP.[1] As we have previously stated in this document, EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See 40 CFR 51.390. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL redesignation).

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Reading Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter any requirements that would preclude EPA from finalizing the redesignation of this area.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure. In the case of the Reading Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Reading Area. The Chapter 127 Part D NSR regulations in the Pennsylvania SIP explicitly apply the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

[1] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. See 61 FR 53174, October 10, 1996 and 62 FR 24826, May 7, 1997 (Reading, Pennsylvania Redesignation). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. See 61 FR 53174 at 53175–53176 (October 10, 1996) and 62 FR 24826 at 24830–24832 (May 7, 1997).

5. The Reading Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR at 25425 (May 12, 2003) and citations therein. The Reading Area was a 1-hour maintenance area which had been a moderate nonattainment area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). No Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Reading Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that Pennsylvania has fulfilled all 8-hour Part D requirements applicable for purposes of redesignation.

C. The Air Quality Improvement in the Reading Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Reading Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	4.7	21.8	8.4	20.1	55.0
Year 2004	4.7	21.7	8.1	17.0	51.5
Diff. (02–04)	0.0	0.1	0.3	3.1	3.5
Nitrogen Oxides (NO_X)					
Year 2002	14.5	2.1	10.9	34.1	61.6
Year 2004	16.0	2.1	10.3	29.8	58.2
Difference (02–04)	−1.5	0.0	0.6	4.3	3.4

Between 2002 and 2004, VOC emissions were reduced by 3.5 tpd, and NO_X emissions were reduced by 3.3 tpd, due to the following permanent and enforceable measures implemented in the Reading Area:

(1) Stationary Area Sources
  (a) Solvent Cleaning (68 FR 2206, January 16, 2003)
  (b) Portable Fuel Containers (69 FR 70893, December 8, 2004)
(2) Highway Vehicle Sources
  (a) Federal Motor Vehicle Control Program (FMVCP), Tier 1 (56 FR 25724, June 5, 1991) and Tier 2 (65 FR 6698, February 10, 2000)
  (b) Federal Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000)
  (c) National Low Emission Vehicle (NLEV) (64 FR 72564, December 28, 1999)
  (d) Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005)
(3) Nonroad Sources—Federal Nonroad Engine and Fuels (40 CFR parts 89 to 91, and 1039, 1048 and 1051)

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Reading Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Reading Area to attainment of the 8-hour ozone NAAQS, Pennsylvania submitted for approval under section 175A of the CAA the January 25, 2007, maintenance plan to fulfill section 175A(a) requirement for the 8-hour standard as well as the section 175A(b) requirement for a 1-hour maintenance plan. Pennsylvania submitted this SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Reading Area for at least 10 years after redesignation and for continued maintenance of the 1-hour NAAQS until 2018 which is a total of 21 years after the area was redesignated to attainment of the 1-hour NAAQS. Once approved, the maintenance plan for the ozone NAAQS will ensure that the SIP for the Reading Area meets the requirements of the CAA regarding maintenance of the applicable ozone standards including the 8-hour standard.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A(a), the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Section 175A(b) requires that eight years after the redesignation the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. That is, the maintenance demonstration under section 175A(b) must ensure maintenance for a total of 20 years after redesignation to attainment. For the Reading Area the total demonstrated period of maintenance for the 1-hour NAAQS under section 175A(b) would be until 2017 which is 20 years after the area's redesignation to attainment in 1997. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;

(2) A maintenance demonstration;

(3) A monitoring network;

(4) Verification of continued attainment; and

(5) A contingency plan.

2. Analysis of the Reading Area Maintenance Plan

a. Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Reading Area since it is a reasonable year within the 3-year attainment period of 2003–2005 and accounts for reductions attributable to implementation of the CAA requirements to date. These 2004 levels of emissions are representative of attainment of both the 1-hour and 8-hour ozone NAAQS.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the Reading Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) Point source emissions—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) Area source emissions—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) On-road mobile sources—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Reading Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) Mobile nonroad emissions—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Reading Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO_X emissions for the Reading Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On January 25, 2007, PADEP submitted a SIP revision to supplement its January 25, 2007, redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Reading Area plan shows maintenance of the 8-hour and 1-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Reading Area through the year 2018. The Reading Area maintenance demonstration need not be based on modeling. See *Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also,* 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_X emissions for the Reading Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile*	17.0	13.1	7.5
Nonroad	8.1	6.7	5.6
Area	21.7	21.6	24.0
Point	4.7	3.4	4.3
Total	51.5	44.8	41.4

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Mobile*	29.8	21.3	9.0
Nonroad	10.3	8.4	5.4
Area	2.1	2.2	2.3
Point	16.0	16.8	19.2
Total	58.2	48.7	35.9

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

The following are permanent and enforceable control measures to ensure emissions during the maintenance period are equal to or less than the emissions in the attainment year:

(1) Pennsylvania's Portable Fuel Containers (December 8, 2004, 69 FR 70893);

(2) Pennsylvania's Consumer Products (December 8, 2004, 69 FR 70895); and

(3) Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (November 23, 2004, 69 FR 68080).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

(1) FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2;

(2) NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999);

(3) Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001); and

(4) Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004).

(5) Pennsylvania's vehicle emission inspection/maintenance program (October 6, 2005, 70 FR 58313).

In addition to the permanent and enforceable measures, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005 (70 FR 25162) should have positive impacts on Pennsylvania's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the Reading Area.

Pennsylvania and other nearby states are required to adopt a regulation implementing the requirements of CAIR or an equivalent program. On April 28, 2006 (71 FR 25328), EPA promulgated Federal Implementation Plans (FIPs) to reduce the interstate transport of NO_X and sulfur dioxides that contribute significantly to nonattainment and maintenance 8-hour ozone and $PM_{2.5}$ NAAQS. Because Pennsylvania will not adopt its own CAIR requirements and obtain approval of the required SIP revision by September 2006, the FIP will become operative, imposing the Federal program upon CAIR-affected electric generating units in Pennsylvania. Therefore, allowances for CAIR-related sources will be limited to no more than the allowances issued pursuant to the FIP but may purchase additional allowances under the cap-and-trade rule in the FIP. The Reading Area has one source that is directly regulated by CAIR. For the maintenance demonstration, Pennsylvania did not rely upon any reductions from CAIR at this facility. However, the quality of air transported from upwind sources into the county would be improved.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Reading Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Reading Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the Reading Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51 Subpart A) to see if the area exceed the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and

implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Reading Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Reading Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but not yet implemented at the time excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at any monitor in the Reading Area. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the Reading Area will include, but not limited to the following:

Regulatory measures:

—Additional controls on consumer products.
—Additional control on portable fuel containers.

Non-regulatory measures:

—Voluntary diesel engine ''chip reflash''—installation software to correct the defeat device option on certain heavy duty diesel engines.
—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.
—Idling reduction technology for Class 2 yard locomotives.
—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The following schedule applies to the implementation of the regulatory contingency measures:

—Within 1 month of the trigger, submit request to begin regulatory development process.
—Within 3 months of the trigger, review of regulation by Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council (CAC) and other advisory committees as appropriate.
—Within 6 months of the trigger, Environmental Quality Board (EQB) meeting/action.
—Within 8 months of the trigger, publish in the Pennsylvania Bulletin for comment as proposed rulemaking.
—Within 10 months of the trigger, public hearing takes place and comment period on proposed rule closes.
—Within 11 months of the trigger, House and Senate Standing Committees and Independent Regulatory Review Commission (IRRC) comment on proposed rule.
—Within 13 months of the trigger, AQTAC, CAC and other committees review responses to comments and draft final rulemaking.
—Within 16 months of the trigger, EQB meeting/action.
—Within 17 months of the trigger, IRRC action on rulemaking.
—Within 18 months of the trigger, Attorney General's review/action.
—Within 19 months of the trigger, publication in the Pennsylvania Bulletin as a final rulemaking and submit to EPA as a SIP revision. The regulation would become effective upon publication in the Pennsylvania Bulletin.

The following schedule applies to the implementation of non-regulatory contingency measures:

—Within 2 months of the trigger: Identify stakeholders for potential non-regulatory measures.
—Within 3 months of the trigger, if funding is necessary, identify potential sources of funding and the timeframe under which funds would be available. In addition to non-Title V Clean Air funds, the following program may be able to provide funding: For transportation projects, the Federal Highway Administration, as allocated to the Northern Tier Rural Planning Organization; for projects which will also have an energy efficient co-benefit, the Pennsylvania Energy Harvest program; for projects which would be under taken by small business and are pollution prevention projects, the Small Business Advantage Grant and Small Business Pollution Prevention Loan programs; for projects which will involve alternative fuels for vehicles/refueling operations, the Alternative Fuel Incentive Grant program; for projects involving diesel emissions, Federal Energy Policy Act diesel reduction funds allocated to Pennsylvania or for which Pennsylvania or project sponsors may apply under a competitive process.
—Within 9 months of the trigger, enter into agreements with implementing organizations if state loans or grants are involved. Quantify projected emission benefits.
—Within 12 months of the trigger, submit a revised SIP to EPA.
—Within 12–24 months of the trigger, implement strategies and projects.

(f) Revisions to the 1-Hour Maintenance Plan.

In addition to demonstrating continued maintenance until 2018, the January 25, 2007, maintenance plan also amends the February 3, 1997, maintenance plan in the approved SIP at 40 CFR 52.2020(e)(1) for the Reading Area. Pennsylvania's January 25, 2007 maintenance plan SIP revision for the Reading Area amends the approved 1-hour maintenance plan by removing I/M from the contingency plan. The contingency measures in the February 3, 1997 maintenance plan would be replaced by those in the January 25, 2007, maintenance plan. These contingency measures would be implemented only in response to recorded exceedances or violations of the 8-hour ozone standards and no longer tied to exceedances or violations of the 1-hour ozone standard.

With regard to the first change, in December 2003, Pennsylvania commenced implementation of an OTR enhanced I/M program in Berks County. EPA believes that the actual implementation of the OTR enhanced I/M program means that the contingency measure of a basic I/M program is no longer available as a contingency. The maintenance demonstration relies upon the OTR enhanced I/M program. EPA believes that the January 25, 2007 maintenance plan SIP revision has an

adequate suite of contingency measures. Therefore, for these reasons, EPA believes that the contingency measures plan for the Reading Area currently does not need to contain a basic I/M program since the OTR enhanced program has been implemented.

With regard to removal of the 1-hour contingency measure triggers from the maintenance plan, under 40 CFR 51.905(e) of the April 30, 2004, Phase 1 final rule, EPA may approve a SIP revision requesting the removal of the obligation to implement contingency measures upon a violation of the 1-hour ozone NAAQS when the State submits and EPA approves an attainment demonstration for the 8-hour ozone NAAQS for an area initially designated nonattainment for the 8-hour NAAQS or a maintenance SIP for the 8-hour NAAQS for an area initially designated attainment for the 8-hour NAAQS. EPA believes the rationale of 51.905(e) in relieving areas designated under the 8-hour standard of their 1-hour maintenance plan triggers analogously applies to areas that are being redesignated as attainment with the 8-hour ozone NAAQS. Accordingly, EPA is proposing to relieve the Reading Area of its maintenance plan obligations with respect to implementing contingency measures in the event of a violation of the 1-hour standard. Furthermore, to the extent that 40 CFR 51.905(e) of the Phase 1 final rule may be vacated by the *South Coast* decision, EPA believes there is an alternate basis for allowing the Commonwealth to remove the 1-hour triggers from the SIP-approved maintenance for the Reading Area. EPA has determined that the 8-hour NAAQS provides increased public health protection as compared to the 1-hour ozone standard. See 62 FR at 38859 (July 18, 1997). Because the 8-hour standard is more stringent than the 1-hour standard, a maintenance plan with triggers tied to the 8-hour standard will be more protective of public health than a maintenance plan with contingency measure triggers tied to the 1-hour standard. This greater protectiveness of the 8-hour standard provides an additional justification for removing the 1-hour triggers from the maintenance plan.

(g) Summary of EPA's Evaluation of the Maintenance Plan.

EPA concludes that the January 25, 2007 maintenance plan meets the requirements of section 175A of the CAA and the revisions to the 1-hour maintenance plan otherwise meets the requirements of the CAA including section 110(l) as it does not interfere with any applicable requirement such as those concerning attainment, reasonable further progress towards attainment or maintenance.

VII. Does the Maintenance Plan Establish and Identify Adequate and Approvable Motor Vehicle Emissions Budgets for the Reading Area?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Reading Area are listed in Table 1 of this document for the 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Reading Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Reading Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 were 51.5 tpd of VOC and 58.2 tpd of NO_X. PADEP projected emissions out to the year 2018 and obtained totals of 40.4 tpd of VOC and 35.3 tpd of NO_X from all sources in the Reading Area. The safety margin for the Reading Area for 2018 would be the difference between these amounts. This difference is 11.1 tpd of VOC and 22.9 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels

that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE READING AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	51.5	58.2
2009 Interim	43.8	48.1
2009 Safety Margin	7.7	10.1
2004 Attainment	51.5	58.2
2018 Final	40.4	35.3
2018 Safety Margin	11.1	22.9

PADEP allocated 1.0 tpd VOC and 0.6 tpd NO_X to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 1.0 tpd VOC and 0.6 tpd NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Reading Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE READING AREA TONS PER DAY

[Rounded to nearest 0.1 tpd]

Inventory year	VOC emissions	NO_X emissions
2009 projected on-road mobile source projected emissions	12.1	20.7
2009 Safety Margin Allocated to MVEBs	1.0	0.6
2009 MVEBs	13.1	21.3
2018 projected on-road mobile source projected emissions	6.5	8.4
2018 Safety Margin Allocated to MVEBs	1.0	0.6
2018 MVEBs	7.5	9.0

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Reading Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Reading Area Maintenance Plan?

The MVEBs for the Reading Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Reading Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Reading Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Reading Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's January 25, 2007, request for the Reading Area to be designated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Reading Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for Reading Area, submitted on January 25, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Reading Area because it meets the requirements of section 175A of the CAA as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Reading Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the Reading Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–10356 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0174; FRL–8320–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Determination, Redesignation of the Franklin County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Franklin County ozone nonattainment area (Franklin County Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Franklin County Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Franklin County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Franklin County Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Franklin County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Franklin County Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Franklin County Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA. EPA is also proposing to issue a determination that the area has attained the 1-hour ozone NAAQS, and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone.

DATES: Written comments must be received on or before June 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0174 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *miller.linda@epa.gov.*

C. Mail: EPA–R03–OAR–2007–0174, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0174. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

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I. What Actions Are EPA Proposing To Take?

On December 14, 2006, PADEP formally submitted a request to redesignate the Franklin County Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on December 14, 2006, PADEP submitted a maintenance plan for the Franklin County Area as a SIP revision to ensure continued attainment for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on December 14, 2006. The Franklin County Area is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Franklin County Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Franklin County Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Franklin County Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Franklin County Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes. EPA is also proposing to issue a determination that the area has attained the 1-hour ozone NAAQS, and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Franklin County Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003. On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Franklin County Area (as well as most other areas of the country) effective June 15, 2005. *See* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and *see* 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour

Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C.Cir. 2006) (hereafter ''*South Coast.*''). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The Franklin County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in South Coast is not an impediment to redesignating the Franklin County Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, Franklin County Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2003–2005 indicates that the Franklin County Area has a design value of 0.075 ppm. Therefore, the ambient ozone data for the Franklin County Area indicates no violations of the 8-hour ozone standard.

B. The Franklin County Area

The Franklin County Area consists solely of Franklin County, Pennsylvania and was designated as basic 8-hour ozone nonattainment status in an April 30, 2004 Final Rule (69 FR 23857). Prior to its designation as an 8-hour basic ozone nonattainment area, the Franklin County Area was designated an incomplete data nonattainment area for the 1-hour standard. *See* 56 FR 56694 at 56822, November 6, 1991.

On December 14, 2006, PADEP requested that the Franklin County Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Franklin County Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;

• ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

• ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

• Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

• ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On December 14, 2006, PADEP requested redesignation of the Franklin County Area to attainment for the 8-hour ozone standard. On December 14, PADEP submitted a maintenance plan for the Franklin County Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Franklin County Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Franklin County Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY—ROUNDED UPWARD TO ONE DECIMAL PLACE

Year	NO_X	VOC
2009	12.7	7.3
2018	6.7	5.1

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that Franklin County Area has attained the 8-hour ozone standard and the 1-hour standard if that standard is reinstated and that all other redesignation criteria have been met. The following is a description of how PADEP's December 14, 2006, submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Franklin County Area Has Attained the Ozone NAAQS

EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Franklin County Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2003–2005 (the most recent three years of data available as of the time of the redesignation request) for the Franklin County Area. This data has been quality assured and is recorded in AQS. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2A.

TABLE 2A.—FRANKLIN COUNTY NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; FRANKLIN COUNTY MONITOR, AQS ID 42–055–0001

Year	Annual 4th High Reading (ppm)
2003	0.080
2004	0.071
2005	0.074
2006	0.066
The average for the 3-year period 2003 through 2005 is 0.075 ppm.	
The average for the 3-year period 2004 through 2006 is 0.070 ppm.	

The air quality data for 2003–2005 show that the Franklin County Area has attained the standard with a design value of 0.075 ppm. The data collected at the Franklin County Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. EPA believes this conclusion remains valid that after review of the available 2006 data because the fourth-highest daily maximum 8-hour average ozone concentration was 0.066 ppm which equates to a design value 0.070 ppm for the period 2004–2006. PADEP's request for redesignation for the Franklin County Area indicates that the data was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Franklin County Area has attained the 8-hour ozone NAAQS.

Based upon the ozone monitoring data for the years 1996–1998, EPA believes that the Franklin County Area attained the 1-hour ozone NAAQS and continued to attain the 1-hour NAAQS to present. For the 1-hour ozone standard, an area may be considered to

be attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. Compliance is determined on a monitor-by-monitor basis within the area. To demonstrate attainment, i.e., compliance with this standard, the annual average of the number of expected exceedances of the 1-hour standard over a 3-year period must be less than or equal to 1. (To account for missing data, adjustment of the actual number of monitored exceedances of the standard yields the annual expected number of exceedances at an air quality monitoring site.) Table 2B provides a summary of the number of expected exceedances for each of the years 1996 through 2006.

TABLE 2B.—FRANKLIN COUNTY AREA NUMBER OF EXPECTED EXCEEDANCES OF THE 1-HOUR OZONE STANDARD; FRANKLIN COUNTY MONITOR, AQS ID 42–117–4000

Year	Number of expected exceedances
1996	0.0
1997	0.0
1998	0.0
1999	0.0
2000	0.0
2001	0.0
2002	0.0
2003	0.0
2004	0.0
2005	0.0
2006	0.0

The average number of expected exceedances for any three-year period to date is 0.0.

In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Franklin County Area is maintaining air quality that conforms to the 1-hour ozone NAAQS.

The EPA is proposing to issue a determination that the Franklin County Area has attained the 1-hour NAAQS for ozone. This proposed determination is based upon the 1996 through 2006 air quality data. While section 181(b)(2)(A) specifies that EPA is to make the statutorily required determinations of attainment using the 1-hour ozone ''design value,'' EPA ''has interpreted this provision generally to refer to EPA's methodology for determining attainment status.'' *See* 60 FR 3349 at 3350, January 17, 1995. As noted previously, EPA determines the attainment status under the 1-hour ozone standard on the basis of the annual average number of expected exceedances.

B. The Franklin County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Franklin County Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also,* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also,* 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's

designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Franklin County Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings, (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also,* the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Franklin County Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Franklin County Area was classified under Subpart 1 and was obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also,* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, see *Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' Id. at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to subpart 2 requirements, if the Franklin County Area initially had been classified under subpart 2 the first two part D subpart 2 requirements applicable to the Franklin County Area under section 182(a) of the CAA would be: A base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, the emissions statement requirement pursuant to section 182(a)(3)(B) of the CAA.

As we have stated previously in this document, these requirements are not yet due for purpose of redesignation of the Franklin County Area, but nevertheless, Pennsylvania already has in its approved SIP an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area, and that satisfies the emissions statement requirement for the 8-hour standard. See 25 Pa. Code 135.21(a)(1) codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for the Franklin County Area, which was submitted on December 14, 2006, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base year inventory as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania's 2002 base-year inventory for the Franklin County Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking.

EPA has determined that the emission inventory and emissions statement requirements for the Franklin County Area have been satisfied.

In addition to the fact that part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also,* 60 FR 62748 (December 7, 1995).

In the case of the Franklin County Area, EPA has also determined that before being redesignated, the Franklin County Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the Franklin County Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a basic 8-hour ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Franklin County Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rational for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Franklin County Area by virtue of the area's designation and classification. Rather, section 184 measures are required in the Franklin County Area because it is located in the OTR. *See* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

Prior to its designation as an 8-hour ozone nonattainment area, the Franklin County Area was designated an incomplete data nonattainment area for the 1-hour standard. *See* 56 FR 56694 at 56822, November 6, 1991.

In its December 22, 2006 decision in *South Coast,* the Court addressed EPA's revocation of the 1-hour ozone standard. The current status of the revocation and associated anti-backsliding rules is dependent on whether the Court's decision stands as originally issued or is modified in response to any petition for rehearing or request for clarification that has been filed. As described more fully below, EPA believes that the area has attained the 1-hour standard and has met all of the requirements applicable for redesignation under the 1-hour standard that would apply even if the 1-hour standard is deemed to be reinstated and those requirements are viewed as applying under the statute itself. Thus, the Court's decision, as it currently stands, imposes no impediment to moving forward with redesignation of the area to attainment. Further, even if the Court's decision were modified based upon any petition for rehearing that has been filed, such that the ultimate decision requires something less than compliance with all applicable 1-hour requirements, because the area meets all such requirements, as explained below, it would certainly meet any lesser requirements and thus redesignation could proceed.

The conformity portion of the Court's ruling does not impact the redesignation request for the Franklin County Area because there are no conformity requirements that are relevant to redesignation request for any standard, including the requirement to submit a transportation conformity SIP.[1] As we have previously stated in this document, EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved.

With respect to other requirements under the 1-hour standard, in our April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 at 13524–13527) EPA concluded that the Clean Air Act provides no specific guidance concerning applicable requirements for certain unclassifiable nonattainment areas including incomplete data areas. We observed that subpart 1 contains general SIP planning requirements, and, we concluded that subpart 2 is not applicable to incomplete data areas.

Under the approach laid out in our April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 at 13524–13527) EPA concluded that because incomplete areas are designated nonattainment some aspects of Subpart 1 necessarily apply. *See* 57 FR 13498 at 13525 (April 16, 1992). With regard to RACT/Reasonably available control measures (RACM),

[1] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

EPA's position is that requiring all RACT corrections for incomplete data areas is unreasonable, but we required that incomplete data areas must correct any RACT deficiencies regarding enforceability of existing rules in order to be redesignated to attainment. *Id.* at 13525. With regard to the emission inventory requirement, EPA believes that because an emissions inventory is specifically required under section 172(c)(3) and is not tied to an area's proximity to attainment an incomplete data area was required to develop such an inventory even if only to develop an approvable maintenance plan under section 175A. *Id.* at 13525.

Furthermore, with respect to the attainment demonstration and RACM, RFP, and contingency measure requirements of part D, under EPA's Clean Data Policy, as embodied in 40 CFR 51.918, upon a finding that the area is attaining the standard, requirements for SIP submissions linked to attainment demonstrations, reasonable further progress (RFP) and contingency measures are suspended for so long as the area is attaining the standard. EPA described its interpretation in a May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard.'' *See also,* the discussion and rulemakings cited in EPA's Final Rule to Implement the 8-Hour Ozone NAAQS—Phase 2, 70 FR 71612, 71644–71646 (November 29, 2005). The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion.

We are proposing to find that the Franklin County Area has met the 1-hour ozone standard, and thus the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning RFP, and section 172(c)(9) contingency measures under the 1-hour standard are not applicable for purposes of redesignation.[2]

If, while this proposal is pending, the 1-hour ozone standard is reinstated and a violation of the 1-hour ozone NAAQS is monitored (consistent with the requirements contained in 40 CFR part 58 and recorded in AQS) in this nonattainment area the EPA would not issue a final determination of attainment for the affected area. If the area remains in attainment and EPA issues a final determination of attainment, a subsequent monitored violation prior to redesignation to attainment of the 1-hour ozone NAAQS would also mean that the area would thereafter have to address the requirements of sections 172(c)(1), 172(c)(2) and 172(c)(9), since the basis for the determination that they do not apply would no longer exist. This proposal does not revoke the 1-hour NAAQS for ozone in the Franklin County Area.

With respect to NSR, EPA has determined that areas being redesignated need not have an approved New Source Review program for the same reasons discussed previously with respect to the applicable part D requirements for the 8-hour standard.

Therefore, the only 1-hour Part D elements currently applicable to the Franklin County Area by virtue of its designation and classification as an incomplete data nonattainment area under the 1-hour ozone NAAQS were the corrections of any RACT deficiencies regarding enforceability of existing rules in order to be redesignated to attainment, and the emission inventory requirement. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the CAA (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to incomplete data and subpart 2 areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 173(c)(3) provided for the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator. In this proposed rule, EPA is proposing to approve a 2002 base year emissions inventory for the Franklin County Area as meeting the requirements of section 172(c)(3) as well as section 182(a)(1). While EPA generally required that the base year inventory for the 1-hour standard be for calendar year 1990, EPA believes that Pennsylvania's 2002 inventory fulfills this requirement because it meets EPA's guidance and because it is more current than 1990. EPA also proposes to determine that, if the 1-hour standard is deemed to be reinstated, the 2002 base year inventory for the 8-hour standard will provide an acceptable substitute for the base year inventory for the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of the Franklin County Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. As discussed previously, EPA has fully approved Pennsylvania's NSR SIP revision which applies the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. *See* 61 FR 53174, October 10, 1996 and 62 FR 24826, May 7, 1997 (Reading, Pennsylvania Redesignation). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. *See* 61 FR 53174 at 53175–53176 (October 10, 1996) and 62 FR 24826 at 24830–24832 (May 7, 1997).

5. The Franklin County Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d

[2] We note, however, that the maintenance plan contains contingency measures required under section 175A of the Clean Air Act.

426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR at 25425 (May 12, 2003) and citations therein. The Franklin County Area was a 1-hour incomplete data area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the Franklin County Area was a 1-hour incomplete data area, the only previous part D SIP submittal requirement was the RACT corrections due under section 182(a)(2)(A) and the comprehensive emissions inventory due under section 172(c)(3) for the 1-hour standard. The RACT corrections are fully approved (59 FR 65971, December 22, 1994), and, EPA is proposing to approve a comprehensive inventory for the area in this notice of proposed rulemaking. No other Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Franklin County Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Franklin County Area, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the Franklin County Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Franklin County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0.7	7.8	2.6	9.7	20.8
Year 2004	0.8	7.8	2.6	8.6	19.8
Difference (02–04)	−0.1	0.0	0.0	1.1	1.0
Nitrogen Oxides (NO_X)					
Year 2002	0.4	0.7	4.2	18.3	23.6
Year 2004	0.6	0.7	4.0	16.5	21.8
Difference (02–04)	−0.2	0.0	0.2	1.8	1.8

Between 2002 and 2004, VOC emissions were reduced by 1.1 tpd, and NO_X emissions were reduced by 1.8 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Franklin County Area:

1. Stationary Point Sources

Interstate Pollution Transport Reduction (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP).

—Tier 1 (56 FR 25724, June 5, 1991).
—Tier 2 (65 FR 6698, February 10, 2000).

Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000).

National Low Emission Vehicle (NLEV) (64 FR 72564, December 28, 1999).

Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005).

4. Nonroad Sources

Nonroad Diesel Engine and Fuel (69 FR 38958, June 29, 2004).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Franklin County Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Franklin County Area to attainment of the 8-hour ozone NAAQS, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Franklin County Area for at least 10 years after redesignation. Pennsylvania is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Franklin County Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such

contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;

(2) A maintenance demonstration;

(3) A monitoring network;

(4) Verification of continued attainment; and

(5) A contingency plan.

2. Analysis of the Franklin County Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Franklin County Area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the Franklin County Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Franklin County Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Franklin County Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO_X emissions for the Franklin County Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On December 14, 2006, PADEP submitted a SIP revision to supplement its December 14, 2006, redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Franklin County Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Franklin County Area through the year 2018. The Franklin County Area maintenance demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also,* 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_X emissions for the Franklin County Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC Emissions	2009 VOC Emissions	2018 VOC Emissions
Mobile*	8.6	7.3	5.1
Nonroad	2.6	2.2	1.8
Area	7.8	7.8	8.0
Point	0.8	0.6	0.8
Total	19.8	17.9	15.7

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X Emissions	2009 NO_X Emissions	2018 NO_X Emissions
Mobile*	16.5	12.7	6.7
Nonroad	4.0	3.4	2.2
Area	0.7	0.7	0.8
Point	0.6	0.3	0.3
Total	21.8	17.0	9.9

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

The following are permanent and enforceable control measures to ensure emissions during the maintenance period are equal to or less than the emissions in the attainment year:

1. Pennsylvania's Portable Fuel Containers (December 8, 2004, 69 FR 70893);
2. Pennsylvania's Consumer Products (December 8, 2004, 69 FR 70895); and
3. Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (November 23, 2004, 69 FR 68080).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

1. FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2;
2. NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999);
3. Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001); and
4. Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004).

In addition to the permanent and enforceable measures, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005 (70 FR 25162) should have positive impacts on Pennsylvania's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the Franklin County Area.

Pennsylvania and other nearby states are required to adopt a regulation implementing the requirements of CAIR or an equivalent program. On April 28, 2006 (71 FR 25328), EPA promulgated Federal Implementation Plans (FIPs) to reduce the interstate transport of NO_X and sulfur dioxides that contribute significantly to nonattainment and maintenance 8-hour ozone and $PM_{2.5}$ NAAQS. Because Pennsylvania will not adopt its own CAIR requirements and obtain approval of the required SIP revision by September 2006, the FIP will become operative, imposing the Federal program upon CAIR-affected electric generating units in Pennsylvania. Therefore, allowances for CAIR-related sources will be limited to no more than the allowances issued pursuant to the FIP. The Franklin County Area has no sources that are directly regulated by CAIR, and therefore is not showing an emission reduction from this regulation. However, the quality of air transported from upwind sources into the county would be improved.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Franklin County Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Franklin County Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the Franklin County Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51 Subpart A) to see if the area exceed the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Franklin County Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Franklin County Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but no yet implemented at the time of excessive

ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at the Franklin County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the Franklin County Area will include, but not limited to the following:

Regulatory measures:

—Additional controls on consumer products
—Additional control on portable fuel containers

Non-regulatory measures:

—Voluntary diesel engine ''chip reflash''—installation software to correct the defeat device option on certain heavy duty diesel engines.
—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.
—Idling reduction technology for Class 2 yard locomotives.
—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The following schedule applies to the implementation of the regulatory contingency measures:

—Within 1 month of the trigger, submit request to begin regulatory development process.
—Within 3 months of the trigger, review of regulation by Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council (CAC) and other advisory committees as appropriate.
—Within 6 months of the trigger, Environmental Quality Board (EQB) meeting/action.
—Within 8 months of the trigger, publish in the Pennsylvania Bulletin for comment as proposed rulemaking.
—Within 10 months of the trigger, public hearing takes place and comment period on proposed rule closes.
—Within 11 months of the trigger, House and Senate Standing Committees and Independent Regulatory Review Commission (IRRC) comment on proposed rule.
—Within 13 months of the trigger, AQTAC, CAC and other committees review responses to comments and draft final rulemaking.
—Within 16 months of the trigger, EQB meeting/action.
—Within 17 months of the trigger, IRRC action on rulemaking.
—Within 18 months of the trigger, Attorney General's review/action.
—Within 19 months of the trigger, publication in the Pennsylvania Bulletin as a final rulemaking and submit to EPA as a SIP revision. The regulation would become effective upon publication in the Pennsylvania Bulletin.

The following schedule applies to the implementation of non-regulatory contingency measures:

—Within 2 months of the trigger: Identify stakeholders for potential non-regulatory measures.
—Within 3 months of the trigger, if funding is necessary, identify potential sources of funding and the timeframe under which funds would be available. In addition to non-Title V Clean Air funds, the following program may be able to provide funding: For transportation projects, the Federal Highway Administration, as allocated to the Northern Tier Rural Planning Organization; for projects which will also have an energy efficient co-benefit, the Pennsylvania Energy Harvest program; for projects which would be under taken by small business and are pollution prevention projects, the Small Business Advantage Grant and Small Business Pollution Prevention Loan programs; for projects which will involve alternative fuels for vehicles/refueling operations, the Alternative Fuel Incentive Grant program; for projects involving diesel emissions, Federal Energy Policy Act diesel reduction funds allocated to Pennsylvania or for which Pennsylvania or project sponsors may apply under a competitive process.
—Within 9 months of the trigger, enter into agreements with implementing organizations if state loans or grants are involved. Quantify projected emission benefits.
—Within 12months of the trigger, submit a revised SIP to EPA.
—Within 12–24 months of the trigger, implement strategies and projects.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Franklin County Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Franklin County Area are listed in Table 1 of this document for the 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Franklin County Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Franklin County Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 19.8 tpd of VOC and 21.8 tpd of NO_X. PADEP projected emissions out to the year 2018 and projected a total of 15.7 tpd of VOC and 9.9 tpd of NO_X from all sources in the Franklin County Area. The safety margin for Franklin for 2018 would be the difference between these amounts. This difference is 4.1 tpd of VOC and 11.9 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.— 2009 AND 2018 SAFETY MARGINS FOR THE FRANKLIN COUNTY AREA

Inventory year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2004 Attainment	19.8	21.8
2009 Interim	17.9	17.0
2009 Safety Margin	1.9	4.8
2004 Attainment	19.8	21.8
2018 Final	15.7	9.9
2018 Safety Margin	4.1	11.9

PADEP allocated 0.7 tpd of VOC and 0.4 tpd of NO_X emissions to the 2009 VOC projected on-road mobile source emissions projection and the 2009 NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 1.0 tpd of VOC and 0.7 tpd of NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Franklin County Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE FRANKLIN COUNTY AREA IN TONS PER DAY ROUNDED UP TO NEAREST 0.1 TONS PER DAY

Inventory year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2009 projected on-road mobile source projected emissions	6.6	12.3
2009 Safety Margin Allocated to MVEBs	0.7	0.4
2009 MVEBs	7.3	12.7
2018 projected on-road mobile source projected emissions	4.1	6.0
2018 Safety Margin Allocated to MVEBs	1.0	0.7
2018 MVEBs	5.1	6.7

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Franklin County Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Franklin County Area Maintenance Plan?

The MVEBs for the Franklin County Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for

transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Franklin County Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Franklin County Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's December 14, 2006, request for the Franklin County Area to be designated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for the Franklin County Area, submitted on December 14, 2006, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Franklin County Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Franklin County Area in conjunction with its redesignation request. EPA is also proposing to issue a determination pursuant to section 181(b)(2) that the area has attained the 1-hour ozone NAAQS and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the Franklin County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–10351 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 99–217; CC Docket No. 96–98; DA 07–1485]

Parties Asked To Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites interested parties to update the record pertaining to issues raised in the Commission's Competitive Networks proceeding in light of marketplace and industry developments.

DATES: Comments due on or before July 30, 2007, reply comments due on or before August 28, 2007.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch , Office of the Secretary, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC. Comments may be submitted, identified by WT Docket No. 99–217 and CC Docket No. 96–98, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *jeremy.miller@fcc.gov.* Include WT Docket No. 99–217 and CC Docket No. 96–98 in the subject line of the message.
- *Fax:* To the attention of Jeremy Miller at 202–418–1413. Include WT Docket No. 99–217 and CC Docket No. 96–98 on the cover page.
- *Mail:* Parties should send a copy of their filings to Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–B145, 445 12th Street, SW., Washington, DC 20554.
- *Public inspection, purchase, or download:* The full text of the document summarized here is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 225 12th Street, SW., Room CY–A257, Washington, DC 20504. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, and may also be downloaded at: *http://www.fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Wireline Competition Bureau, Competition Policy Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in WT Docket No. 99–217 and CC Docket No. 96–98, DA No. 07–1485, released March 28, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* By this document, the Commission establishes comment and reply comment filing dates for receiving updated comments and refreshing the record on a Further Notice of Proposed Rulemaking addressing the status of the market for the provision of telecommunications services in Multiple Tenant Environments (MTEs), and on whether the prohibition on exclusive access contracts in commercial MTEs should be extended to residential MTEs. The filing dates established replace filing dates previously established in the Competitive Networks Further Notice of Proposed Rulemaking, DA 01–750, 66 FR 2322, January 11, 2001, released by the Commission on October 25, 2000. The proceeding for which the Commission seeks to refresh the record is intended to enable the Commission to undertake appropriate review of the status of the deployment of competitive and advanced telecommunications services in MTEs, and to determine whether additional action is necessary to address the ability of premises owners to discriminate unreasonably among competing telecommunications service providers.

Interested parties may file comments on or before July 30, 2007 and reply comments on or before August 28, 2007. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WT Docket No. 99–217 and CC Docket No. 96–98. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jeremy Miller, Competitive Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–B145, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Jeremy.Miller@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in WT Docket No. 99–217 and CC Docket No. 96–98 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Federal Communications Commission.

Kirk S. Burgee,

Chief of Staff, Wireline Competition Bureau.

[FR Doc. E7–10078 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–237; FCC 07–78]

Interference Temperature Operation

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding.

SUMMARY: This document terminates the ''Interference Temperature Model for Quantifying and Managing Interference'' proceeding. While there was some support in the record for adopting an interference temperature approach, no parties provided information on specific technical rules that we could adopt to implement it. Further, with the passage of time, the NOI/NPRM and the record in this proceeding have become outdated. The Commission is therefore terminating this proceeding without prejudice to its substantive merits.

DATES: This proceeding is terminated as of May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Hugh VanTuyl, Policy and Rules Division, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* ET Docket No. 03–237, FCC 07–78, adopted May 2, 2007 and released May 4, 2007. The full text of this document is available on the Commission's Internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Order

1. On November 13, 2003, the Commission adopted a *Notice of Inquiry and Notice of Proposed Rule Making* (NOI/NPRM), 69 FR 2863, January 21, 2004, in this proceeding. The *NOI/NPRM* sought comment on the need for, development of, and implementation of, a new ''interference temperature'' model for managing interference. That approach would shift the current method of assessing interference which is based on transmitter operations, to an approach that takes into account the cumulative effects of all undesired radiofrequency energy, i.e., energy that may result in interference from both transmitters and noise sources, that is present at a receiver at any instance of time. The NOI/NPRM also sought comment on establishing interference temperature limits and procedures for assessing interference temperature in the 6525–6700 MHz band and portions of the 12.75–13.25 GHz band.

2. Commenting parties generally argued that the interference temperature approach is not a workable concept and would result in increased interference in the frequency bands where it would be used. While there was some support in the record for adopting an interference temperature approach, no parties provided information on specific technical rules that we could adopt to implement it. Further, with the passage of time, the NOI/NPRM and the record in this proceeding have become outdated. The Commission is therefore terminating this proceeding without prejudice to its substantive merits.

3. The Commission will not send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the *Order* does not adopt any rules it only terminates the proceeding.

Ordering Clauses

4. Pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. sections 154(i) and 154(j), ET Docket No. 03–237 is terminated, as of May 4, 2007.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10337 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 06–150; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86; DA 07–2197]

Comment Sought on Google Proposals Regarding Service Rules for 700 MHz Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau seeks comments on a proposal recently submitted by Google regarding service rules for the 700 MHz spectrum that is to be auctioned. Google requests that the Commission clarify the service rules governing the 700 MHz bands and declare that the rules allow the use of ''dynamic auction mechanisms'' such as real-time auctions and per-device registration fees. Google also requests that the Commission posit at least whether it would be in the public interest to mandate the use of such mechanisms for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The document also seeks comment on Google's proposal that the unpaired 6 megahertz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of broadband communications platforms. Finally, the document seeks comment on the Initial Regulatory Flexibility Analysis.

DATES: Comments due on or before June 6, 2007 and reply comments are due on or before June 13, 2007.

ADDRESSES: You may submit comments, identified by WT Docket No. 06–150; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- E-mail: Include the docket numbers in the subject line of the message.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Branscome, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at 202–418–8205 or by e-mail at *John.Branscome@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice released May 24, 2007, DA 07–2197. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of the Public Notice

On April 27, 2007, the Commission released a Report and Order (72 FR 27688) and Further Notice of Proposed Rulemaking (72 FR 24238), which addresses rules governing wireless licenses in the 698–806 MHz Band (herein, the ''700 MHz Band''). This spectrum currently is occupied by television broadcasters in TV channels 52–69 and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (''DTV'') transition. On May 21, 2007, Google Inc. (''Google'') filed an *ex parte* letter asking that the Commission seek immediate comment on certain proposals regarding the service rules for the 700 MHz Band spectrum that is to be auctioned. In the Public Notice, the Wireless Telecommunications Bureau seeks comment on those proposals as well as any other alternative approaches for conditioning the licenses that will be auctioned.

Google requests that the Commission clarify that the Commission's existing rules governing commercial spectrum in the 700 MHz Band already allow licensees to utilize ''dynamic auction mechanisms,'' such as real-time auctions and per-device registration fees. In Google's real-time airwaves auction model, a licensee could bestow the right to transmit an amount of power for a unit of time, with the total amount of power in any location being limited to a specified cap. According to Google, as part of a real-time auction process,

the communications device itself could become key to the payment process. For example, a consumer's price to purchase a device could include an airwaves registration fee that would grant the ability to gain unlimited use at a specified power level. The Public Notice seeks comment broadly on the extent to which the Commission's existing rules permit 700 MHz licensees to employ such ''dynamic spectrum management techniques.'' To the extent they are not currently permitted, the Notice asks whether the Commission should modify any of its rules to permit their use.

Google also requests that the Commission posit at least whether it would be in the public interest to mandate the use of such techniques for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The Public Notice seeks comment on whether the Commission should mandate such an approach, and if so, to what extent.

The Public Notice also seeks comment on Google's proposal that the unpaired 6 megahertz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of interactive, two-way broadband services; connected to the public internet; and used to support innovative software-based applications, services and devices.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the Public Notice on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Public Notice, including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

The Public Notice seeks comments broadly on a proposal recently submitted by Google and on any other alternative approaches for conditioning the licenses that will be auctioned in the 700 MHz band. Google requests that the Commission clarify the service rules governing the 700 MHz bands and declare that the rules allow the use of ''dynamic auction'' mechanisms such as real-time auctions and per-device registration fees. Google also asks the Commission to consider whether it would be in the public interest to mandate such mechanisms for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The Public Notice also seeks comment on Google's proposal that the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of broadband communications platforms.

B. Legal Basis

The legal authority for the actions proposed in this Public Notice are contained in sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610.

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

Governmental Entities. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 2002, there were approximately 87,525 governmental jurisdictions in the United States. This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

Under this Public Notice, any of the changes to the Commission's rules which may occur as a result of the Public Notice would be limited to the 698–806 MHz spectrum band. Since this rulemaking proceeding applies to services in that band, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information

describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this Public Notice.

700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Upper 700 MHz Band Licenses. The Commission released a Report and Order authorizing service in the Upper 700 MHz band. An auction for these licenses, previously scheduled for January 13, 2003, was postponed.

Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

Public Safety Radio Licensees. As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a small business size standard for cellular and other wireless telecommunications companies, which encompasses business entities engaged in wireless communications employing no more than 1,500 persons. According to Census Bureau data for 2002, in this category there were 8,863 firms that operated for the entire year. Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

Wireless Communications Equipment Manufacturers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Google requests that the Commission clarify that the existing rules governing the commercial bands of the 700 MHz spectrum already allow licensees to utilize what it describes as ''dynamic spectrum management techniques.'' Google provides as examples ''real-time airwaves auctions'' and ''device-driven registration.'' According to Google, in real-time airwaves auctions, a licensee can bestow the right to transmit an amount of power for a unit of time, with the total amount of power in any location being limited to a specified cap. With a per-device registration process, Google states, the communications device itself can become a key to the payment process, and that a consumer's price to purchase a device could include an airwaves registration fee that would grant the ability to gain unlimited use at a specified power level. Under its proposal, Google states that a licensee would simply purchase spectrum initially in the up-front auction, and then recover its costs over time by charging third parties for real-time and place use. The Public Notice seeks comment broadly on the extent to which the Commission's existing rules permit 700 MHz licensees to employ such ''dynamic spectrum management techniques,'' and on whether the Commission should modify any of its rules to permit their use.

The Public Notice also seeks comment on Google's request that the Commission posit at least whether it would be in the public interest to

mandate the use of such techniques for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands.

The Public Notice also seeks comment on Google's proposal that the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of interactive, two-way broadband services; connected to the public internet; and used to support innovative software-based applications, services and devices.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

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

The Public Notice seeks comment on the relative merits of dynamic auction techniques. The Public Notice also seeks comment on whether the Commission should designate the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan primarily or exclusively for deployment of broadband communications platforms. To assist the Commission in its analysis, commenters are requested to provide information regarding how small entities would be affected if the Commission were to adopt Google's proposals. Commenters should also provide information on alternative approaches to alleviate any potential burdens on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief.

[FR Doc. E7–10417 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–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 Mt. Charleston Blue Butterfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Mt. Charleston blue butterfly (*Icaricia shasta charlestonensis*) 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 the Mt. Charleston blue butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review of this subspecies, and we will issue a 12-month finding to determine if the petitioned action is warranted. To ensure that the status review of the Mt. Charleston blue butterfly is comprehensive, we are soliciting scientific and commercial data regarding this subspecies. A determination on critical habitat will be made if and when a listing action is initiated for this subspecies.

DATES: The finding announced in the document was made on May 30, 2007. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by July 30, 2007.

ADDRESSES: Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, by mail at 4701 North Torrey Pines Drive, Las Vegas, NV, 89130, or by fax at (702) 515–5231. The petition is available at *http://www.fws.gov/nevada.* The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 702/515–5230; facsimile 702/515–5231).

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that substantial information is presented 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 Mt. Charleston blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, North American tribes, the scientific community, industry, or any other interested parties concerning the status of the Mt. Charleston blue butterfly. We are seeking information regarding the subspecies' historical and current status and distribution, its ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat.

We will base our 12 month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to provide comments you may submit your comments and materials concerning this finding to the Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section). 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.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** 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.

Background

Section 4(b)(3)(A) of the Act requires that the U.S. Fish and Wildlife Service (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. This 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 this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register.**

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day 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 this subspecies, if one has not already been initiated under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioner and otherwise available in our files at the time of the petition review. We evaluated this information 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 is based on a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold.

On October 20, 2005, we received a petition from The Urban Wildlands Group, Inc., requesting to emergency-list the Mt. Charleston blue butterfly (*Icaricia shasta charlestonensis*) as a threatened or endangered species. In a letter dated April 20, 2006, we responded to the petitioner that our initial review did not indicate that an emergency situation existed, but that if conditions changed an emergency rule could be developed. This correspondence also indicated that funding was provided to address this petition in Fiscal Year 2006 and that we anticipated making an initial finding early in Fiscal Year 2007 as to whether or not the petition contained substantial information. The purpose of this finding is to determine whether or not the petition presented substantial information regarding the status of this subspecies within the context of the Act. The petition clearly identified itself as such and included the requisite identification information of the petitioner, as required in 50 CFR 424.14(a).

Species Information

The Mt. Charleston blue butterfly is a distinctive subspecies of the wider ranging Shasta blue butterfly (*Icaricia shasta*), which is a member of Lycaenidae (little butterfly family). The subspecies is known only from the high elevations of the Spring Mountains, located approximately 25 miles (40 kilometers (km)) west of Las Vegas in Clark County, Nevada (Austin 1980, p. 20; Scott 1986, p. 410).

Within *Icaricia shasta* there are six subspecies: *I. s. calchas, I. s. shasta, I. s. minnehaha, I. s. charlestonensis, I. s. pallidissima,* and *I. s. pitkinensis* (Scott 1986, p. 410; Murphy 2006, p. 3). The first mention of *I. s. charlestonensis* as a unique taxon was in 1928 by Garth, who recognized it as distinct from the species *shasta* (Austin 1980, p. 20). Howe in 1975 described specimens from the Spring Mountains as *I. s. shasta* form *comstocki* (Austin 1980, p. 20). However, in 1976, Ferris placed the subspecies into the wider ranging *I. s. minnehaha* (Austin 1980, p. 20). Finally, Austin (1980) asserted that Ferris had not included populations from the Sierra Nevada in his study, and in light of the geographic isolation and distinctiveness of the Spring Mountains *shasta* population, and the presence of at least three other well defined races of butterflies endemic to the area, it was appropriate to name this population as the individual subspecies *charlestonensis* (Austin 1980, p. 20). This name and subspecies classification has been retained in the most recent treatments of butterfly taxonomy (Opler and Warren 2002, p. 79).

The wing span of *Icaricia shasta* is ¾ to 1 inch (19 to 26 millimeters (mm)) (Opler 1999, p. 251). Males and females of *Icaricia shasta* are dimorphic. The upperside of males is dark to dull iridescent blue, and females are brown with a blue overlay. The subspecies has a discal black spot on the forewing and a row of submarginal black spots on the hindwing. The underside is gray, with a pattern of black spots, brown blotches, and pale wing veins to give it a mottled appearance. The underside of the hindwing has an inconspicuous band of submarginal metallic spots (Opler 1999, p. 251). Based on morphology, *I. s. charlestonensis* appears to be most closely related to the Great Basin populations of *I. s. minnehaha* (Austin 1980, p. 23) and can be distinguished from *I. s. minnehaha* by sharper and blacker post medial spots on the underside of the hindwing (Scott 1986, p. 410).

Weiss *et al.* (1997, pp. 10–11) describe the natural habitat for the Mt. Charleston blue as relatively flat ridgelines above 8,202 feet (2,500 meters); however, isolated individuals have been observed as low as 6,562 feet (2,000 meters). Like many butterfly species, the Mt. Charleston blue butterfly is dependent on plants both during larval development (larval host plants) and the adult butterfly flight period (nectar plants). The butterfly requires open habitats that support Torrey's milkvetch (*Astragalus calycosus* var. *mancus*), the only known larval host plant for the subspecies (Weiss *et al.* 1994, p. 3; Weiss *et al.* 1997, p. 10). Torrey's milkvetch and Clokey fleabane (*Erigeron clokeyi*) are the primary nectar plants for the subspecies; however, butterflies have also been observed nectaring on Lemmon's bitterweed (*Hymenoxys lemmonii*) and *Aster* sp. (Boyd 2005, p. 1; Weiss *et al.* 1994, p. 3). Torrey's milkvetch is a small, low growing, perennial herb that grows in open areas between 5,000–10,804 feet (1,524–3,293 meters) in subalpine, bristlecone, and mixed conifer vegetation communities of the Spring Mountains. Weiss *et al.* (1997, p. 31) describe favorable habitat for the Mt. Charleston blue butterfly as having high densities of Torrey's milkvetch, which exceed 10 plants per square meter. Good habitat contains relatively little grass cover and visible mineral soil (Boyd 2005, p. 1; Service 2006a, p. 1).

The Mt. Charleston blue butterfly is generally presumed to diapause (period of suspended growth or development similar to hibernation) at the base of the larval host plant or in the surrounding substrate for at least one season (Boyd 2005, p. 1). The typical flight and breeding period for the butterfly is early July to mid-August with a peak in late July, although the species has been observed as early as mid-June and as late as mid-September (Austin 1980, p. 22; Boyd and Austin 1999, p. 17; Forest Service 2006a, p. 9). As with most butterflies, the Mt. Charleston blue butterfly typically flies during sunny conditions, which are particularly important for this subspecies given the cooler air temperatures at high elevations (Weiss *et al.* 1997, p. 31). Excessive winds also deter flight of most butterflies, although Weiss *et al.* (1997, p. 31) speculate this may not be a significant factor for the Mt. Charleston blue butterfly given its low-to-the-ground flight pattern. Other than observations by surveyors, little information is known regarding the

phenology of the Mt. Charleston blue butterfly, as the key determinants for the interactions between the butterfly's flight and breeding period, larval host plant, and environmental conditions have not been specifically studied. Observations indicate that above or below average precipitation, coupled with above or below average temperatures, influence the phenology of this subspecies (Weiss *et al.* 1997, pp. 2–3 and 32; Boyd and Austin 1999, p. 8).

Based on current and historic occurrences, the geographic range of the Mt. Charleston blue butterfly is on the east side of the Spring Mountains, centered on lands managed by the Forest Service in the Spring Mountains National Recreation Area of the Humboldt-Toiyabe National Forest within Kyle and Lee Canyons, Clark County, Nevada. The majority of the occurrences or observations are in the Lee Canyon area, with a few in Kyle Canyon. Table 1 identifies the fifteen separate current and historic locations of the Mt. Charleston blue butterfly that are documented in the petition or identified in the State of Nevada Natural Heritage Program database (The Urban Wildlands Group, Inc. 2005, pp. 1–3; Service 2006b, pp. 2–4).

TABLE 1.—LOCATIONS OR OCCURRENCES OF THE MT. CHARLESTON BLUE BUTTERFLY SINCE 1928 AND THE STATUS OF THE BUTTERFLY AT THE LOCATIONS

Location name	First/last time surveyed or observed	Status	Primary references
1. South Loop Trail, Kyle Canyon	1995/2005	Presumed extant—core colony	Weiss *et al.* 1997.
2. LVSSR #1, Lee Canyon	1995/2005	Presumed extant—core colony [1]	Weiss *et al.* 1997; Boyd and Austin 2002.
3. LVSSR #2, Lee Canyon	1963/2005	Presumed extant—core colony [1]	Austin 1980; Weiss *et al.* 1994; Weiss *et al.* 1997; Boyd and Austin 2002.
4. Foxtail Camp, Lee Canyon	1998/1998	Presumed extant—ephemeral	Boyd and Austin 1999.
5. Youth Camp, Lee Canyon	1995/1995	Presumed extant—ephemeral	Weiss *et al.* 1997.
6. Gary Abbott, Lee Canyon	1995/1995	Presumed extant—ephemeral	Weiss *et al.* 1997.
7. LVSSR Parking, Lee Canyon	1995/1995	Presumed extant—ephemeral	Weiss *et al.* 1997.
8. Mummy Spring, Kyle Canyon	1995/1995	Presumed extant—ephemeral [2]	Weiss *et al.* 1997.
9. Lee Meadow, Lee Canyon	1965/1995	Presumed extant—ephemeral	Weiss *et al.* 1997.
10. Lee Canyon holotype	1963/1976	Presumed extirpated [2]	Austin 1963; Austin 1980; Weiss *et al.* 1997.
11. Cathedral Rock, Kyle Canyon	1972/1972	Presumed extirpated	Austin 1980; Weiss *et al.* 1997.
12. Kyle Canyon Ski Area	1965/1972	Presumed extirpated [2]	Austin 1980; Weiss *et al.* 1997.
13. Old Town, Kyle Canyon	1970s/1970s	Presumed extirpated [3]	The Urban Wildlands Group, Inc. 2005.
14. Deer Creek, Kyle Canyon	1950/1950	Presumed extirpated	Austin 1980.
15. Willow Creek	1928/1928	Presumed extirpated	Austin 1980; Weiss *et al.* 1997.

[1] LVSSR = Las Vegas Ski & Snowboard Resort; LVSSR #2 is not identified as a separate site in Nevada Natural Heritage Program database (likely combined by Heritage with LVSSR #1).
[2] Location is not mentioned in the petition.
[3] Location is not identified in the Nevada Natural Heritage Program database.

The Service presumes that the Mt. Charleston blue butterfly is extirpated from a location when it has not been sighted at that location through formal surveys or informal observation for more than twenty years. We presume the Mt. Charleston blue butterfly is extirpated from 6 of the 15 locations as noted in Table 1 (The Urban Wildlands Group, Inc. 2005, pp. 1–3; Service 2006b, pp. 8–9). The status of the Mt. Charleston blue butterfly at a location is described as presumed extant—ephemeral by the Service when the location is within the extant range of the subspecies and is within potential recruitment distance of an extant core colony. The butterfly exhibits metapopulation dynamics at these locations, likely emigrating to these smaller patches of habitat from the core colonies during years when environmental conditions are favorable (see subsequent core colonies, metapopulation dynamics, and favorable environmental conditions). At many of these ephemeral locations, the Mt. Charleston blue butterfly has not been sighted through formal surveys or informal observation since observed in 1995 by Weiss *et al.* (1997), or formal surveys have not occurred at that location since the butterfly was sighted in 1995 by Weiss *et al.* (1997). As noted in Table 1, the current status of the Mt. Charleston blue butterfly is presumed extant—ephemeral at 6 of the 15 locations or occurrences (The Urban Wildlands Group, Inc. 2005, pp. 1–3; Service 2006b, pp. 7–8).

Three of the 15 historical locations are presumed to be extant core colonies of the subspecies, as adults have been identified through time and were located during formal surveys in 1995 and 2005: South Loop Trail, Las Vegas Ski and Snowboard Resort (LVSSR) #1, and LVSSR #2 (see Table 1) (Weiss *et al.* 1997; Boyd and Austin 2002; Boyd 2005, p. 1; Service 2006b, p. 7; The Urban Wildlands Group, Inc. 2005, pp. 1–3; Service 2006b, p. 2). The term ''core colony'' as applied to our discussion of the Mt. Charleston blue butterfly is used only to describe a specific type of habitat for the butterfly. For our analysis, we define a Mt. Charleston blue butterfly core colony as a colony that meets the following factors: (1) Contains good quality habitat, defined as habitat containing high densities of the host plant, Torrey's milkvetch, with little grass cover, particularly nonnative grass cover (because grasses have been suggested as a reason for habitat degradation or successional changes that make habitat unsuitable for the subspecies, see discussion below); and (2) persists as habitat that maintains the metapopulation dynamics of the subspecies, such that adults are consistently sighted through formal or informal surveys within the colony and emigrants are provided to smaller, outlying habitat patches. The amount of habitat supporting two of the three core colonies of this subspecies has been mapped using a global positioning unit and field-verified by the Service and Forest Service; the core colony at LVSSR #1 occupies 2.4 acres (0.97 hectares), and the core colony at LVSSR #2 occupies 1.3 acres (0.53 hectares),

totaling 3.7 acres (1.5 hectares) (Service 2006a, p. 1). The total area of the third core Mt. Charleston blue butterfly colony (South Loop Trail) has not been field-verified and is estimated at 5 acres (2 hectares) within Kyle Canyon (The Urban Wildlands Group, Inc. 2005, p. 2). Thus across its range, current estimates indicate the Mt. Charleston blue butterfly is restricted to less than 9 acres (3.6 hectares) of core habitat, and the core habitat represents the only known occupied habitat remaining for this subspecies.

Our files indicate that Boyd (2006, pp. 1–2) conducted focused surveys from late May through August of 2006 for the Mt. Charleston blue butterfly at all extant core colonies and at extant ephemeral locations. In addition to these locations, potential Mt. Charleston blue butterfly habitat along Griffith Peak, the South Loop Trail, North Loop Trail, Bristlecone Trail, and South Bonanza Trail was also surveyed in 2006. No observations of Mt. Charleston blue butterfly were made at any location, including the three core colonies (Boyd 2006, p. 1). However, Murphy (2006, p. 1) hypothesizes that the butterfly potentially may have a survival mechanism to adapt and remain in diapause, and therefore may be able to survive unfavorable or inclement conditions for at least one season.

Most butterfly populations occur in roughly the same numbers from year to year, though nearly every population experiences the occasional significant increase or decline depending on environmental conditions, and desert species seem particularly prone to dramatic fluctuations in numbers (Scott 1986, pp. 108–109). The Mt. Charleston blue butterfly has been characterized as particularly rare, but common in some years as noted in the petition (Boyd and Austin 1999, p. 17; The Urban Wildlands Group, Inc. 2005, p. 2). As previously mentioned, variations in precipitation and temperature that affect both the Mt. Charleston blue butterfly and its larval host plant are likely responsible for the fluctuation in population numbers between years (Weiss *et al.* 1997, pp. 2–3 and 31–32). The specific requirements and timing of environmental conditions for larval host plant development, and in turn subspecies reproduction, is not known. Murphy *et al.* (1990, p. 43) note that in general, extreme weather (drought, late season snowstorms, unusually wet weather, etc.) often is the proximate cause of declines or extinctions of butterfly populations throughout the world. Drought has been shown to negatively impact other butterfly populations (Erlich *et al.* 1980, pp. 101–105; Thomas 1984, p. 344). Late season snowstorms have caused alpine butterfly population extinctions in Colorado (Ehrlich *et al.* 1972, p. 246), and high rainfall years have also been associated with population declines for other butterfly species in Europe (Dobkin *et al.* 1987, p. 164). Drought, late season snowstorms, unusually wet weather, and flash flooding associated with summer monsoon thunderstorms are extreme climatic phenomena that occur within the Spring Mountains at unpredictable intervals and have been reported as negatively affecting numerous butterfly species in the Spring Mountains, including the Mt. Charleston blue butterfly, in all stages of development and their host plants (Weiss *et al.* 1997, pp. 2–3 and 31–32; Boyd *et al.* 2000, p. 3).

The 1995 season was a boom year for the Mt. Charleston blue butterfly (Weiss *et al.* 1997, p. 32). Weiss *et al.* (1997, p. 32) commented that in 1995 almost every patch of host plants encountered during the flight season supported butterflies, including small isolated patches. The 1995 season probably represents the maximum population size when environmental conditions were most favorable and includes both the larger core colonies and the smaller, ephemeral habitat patches. In 1928 and 1963, the subspecies also exhibited higher abundances (Austin 1980, p. 22; The Urban Wildlands Group, Inc. 2005, p. 2).

In contrast, the 1996 season represents a low population size for the Mt. Charleston blue butterfly when environmental conditions were unfavorable and very few patches of habitat were occupied. Weiss *et al.* (1997, pp. 32) indicate an extremely dry winter may have caused poor larval host plant quality and, thus, low overwintering success by Mt. Charleston blue larvae in 1996. In addition, Weiss *et al.* (1997, p. 32) suggested that heavy thunderstorms in early July 1996, which delivered 3 inches of rainfall in a few hours, may have killed any Mt. Charleston blue butterflies that had emerged, as well as pupae waiting to emerge, leading to very reduced numbers observed in survey efforts that year.

Similarly, there were no sightings of the Mt. Charleston blue butterfly in 2006 despite focused survey efforts. One possible explanation for the 2006 season may be extreme weather; prior to 2005, there were numerous years of drought, followed by a record snow in the winter of 2004–2005, a dry winter and spring in 2005–2006, and several localized, high rainfall events and cloudy conditions in the summer of 2006. The following possible explanations for the lack of butterfly sightings were offered by two local Mt. Charleston blue butterfly experts as indicated in our files. Boyd (2006, p. 1) theorizes that the Mt. Charleston blue butterfly's host plant, Torrey's milkvetch, experienced delayed emergence in the year 2005 due to the persistence of the snow pack well into the plant's growing season. The delayed emergence of Torrey's milkvetch in 2005 could have negatively impacted butterfly reproduction in the year 2005, which would equate to low recruitment of emerging juveniles in the year 2006. Boyd (2006, p. 1) further hypothesized that since Torrey's milkvetch flowered in early May and June in 2006 (in response to a dry winter and spring), the emergence of the butterfly (typically in July) could have again been out of synchronization with the host plant. Murphy (2006, p. 1) proposed that the localized rain events in late June and July of 2006 could have killed any butterflies that had emerged to date. Murphy (2006, p. 1) also suggests that the dry winter and spring may have prevented the Mt. Charleston blue butterfly from emerging at all. Murphy (2006, p. 1) hypothesizes that the butterfly potentially may have a survival mechanism to adapt and remain in diapause, and therefore may be able to survive unfavorable or inclement conditions for at least one season. Although individuals were not identified during surveys in 2006, we do not consider this subspecies extirpated from the three core colonies. It will be critical for the Mt. Charleston blue butterfly to successfully reproduce and pupae to emerge in 2007.

Based on information in our files, most butterflies almost invariably exist as regional metapopulations (Murphy *et al.* 1990, p. 44). Metapopulation dynamics make it difficult to interpret the true extent of the distribution of Mt. Charleston blue butterfly. Small habitats tend to support small populations that are frequently extirpated by events that are part of normal variation (Murphy *et al.* 1990, p. 44). The continued existence of smaller populations requires the presence of one or more large reservoir populations or core colonies to provide emigrants to smaller, outlying habitat patches (Murphy *et al.* 1990, p. 44). Boyd and Austin (1999, p. 17) suggest smaller colonies of the Mt. Charleston blue butterfly may be ephemeral in the long term with the larger colonies of the subspecies being the only colonies to persist in poor, dry years.

The Mt. Charleston blue butterfly's larval host plant, Torrey's milkvetch, is dependent on early successional habitat

(Weiss *et al.* 1995, p. 5). Healthy metapopulation dynamics allow butterflies, like the Mt. Charleston blue butterfly, to establish new colonies in new habitat patches as vegetation succession renders occupied habitat unsuitable (Hanski and Simberloff 1997, p. 9). Fire and avalanches are natural disturbances that help create this mosaic of different successional states that supports the Mt. Charleston blue butterfly (Weiss *et al.* 1995, p. 5). Forty-three percent (3.7 acres (1.5 hectares)) of remaining habitat known to be occupied by the butterfly occurs on the LVSSR, which operates on Forest Service lands under a special use permit. Weiss *et al.* (1995, p. 5) observed an old avalanche chute, which supports one of the three core colonies for this subspecies on a LVSSR ski run. Large-scale, natural avalanches in the LVSSR, which could have created new habitat for the butterfly, have been prevented for more than 40 years due to the regular use of explosives in the upper portions of the avalanche chutes by the LVSSR. Fire suppression and other Forest Service management practices have also limited the formation of new replacement habitat for the Mt. Charleston blue butterfly. Similar losses of suitable habitat in woodlands and their negative effect on butterfly populations have been documented elsewhere (Thomas 1984, pp. 337–338). However, as described in the petition, because the natural processes that create and maintain successional habitat in an early state, as required by Torrey's milkvetch, have been limited, the LVSSR now provides important core habitat for the Mt. Charleston blue butterfly (The Urban Wildlands Group, Inc. 2005, p. 2). Periodic maintenance (removal of trees and shrubs) of the ski runs has effectively arrested succession on the ski slopes and maintains the early successional state favorable to the Mt. Charleston blue butterfly; however, the ski runs are not specifically managed to benefit habitat for this subspecies and operation activities regularly modify and remove butterfly habitat.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal List 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 Mt. Charleston blue butterfly presented in the petition may pose a concern with respect to its survival. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats, based on information provided in the petition, is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioner claims that present or threatened destruction, modification, or curtailment of the habitat or range of the Mt. Charleston blue butterfly threatens this subspecies such that listing may be warranted. The claim is detailed in the petition by multiple instances of destruction or modification of the subspecies' habitat by construction and other activities, including: (1) Bisection of habitat by South Loop Trail and unsanctioned trails created in habitat in Kyle Canyon; (2) resort improvements at LVSSR #1 in Lee Canyon; (3) construction of a berm at LVSSR #2 in Lee Canyon; (4) installation and expansion of snowmaking apparatus at LVSSR #2 in Lee Canyon; (5) small construction activities at Foxtail Camp in Lee Canyon; (6) expansion of the water system at the Youth Camp in Lee Canyon; and (7) expansion of the parking lot at LVSSR in Lee Canyon (The Urban Wildlands Group, Inc. 2005, pp. 2–3). As further detailed below, information in our files supports the petitioner's claim and the examples cited.

(1) The petition describes that Mt. Charleston blue butterfly habitat along South Loop Trail in Kyle Canyon (one of three core colonies) is being impacted by recreation activity, specifically unsanctioned hiking trails. Based on information in our files, an assessment of an unsanctioned hiking trail to a plane crash site in the vicinity of butterfly habitat identified that the unsanctioned trail has disturbed (through loss and trampling) habitat for the Mt. Charleston blue butterfly as stated in the petition (Service 2006c, pp. 2–7).

(2) The petition describes replacement of a snowmaking apparatus or line that occurred within and impacted the habitat at LVSSR #1, another of the three core colonies of the Mt. Charleston blue butterfly. This claim is supported by information in our files (The Urban Wildlands Group, Inc. 2005, p. 3; Service 2006a, pp. 1–5; Forest Service 2004a, p. 1–3; Forest Service 2004b, p. 9; Forest Service 2006b, pp. 1–9). Based on the best available information in our files (habitat mapping performed by Weiss *et al.* (1995, Figure 8C) and habitat mapping performed by the Service and Forest Service in July 2006 (Service 2006a, pp. 1–5)), we calculate that 2.4 acres (0.97 hectares) of this core colony of Mt. Charleston blue butterfly habitat remains, and we estimate that the construction project associated with the replacement of the specified snowmaking line caused the loss of 0.2 acres (0.08 hectares) of the core habitat.

(3) The petition states that the construction of an avalanche deflection berm in 2000 or 2001 at the top of the northwestern-most ski run (location of the third core colony at LVSSR #2) caused loss and degradation of core butterfly habitat. The location of the earthen berm, and information in our files that maps the Mt. Charleston blue butterfly habitat on the LVSSR ski runs, verifies this assertion (Service 2006a, pp. 1–5).

(4) The petition describes further impacts to the core colony habitat at LVSSR #2 associated with the replacement of a snowmaking apparatus or line in 2005 on a ski run east of the core colony, and information in our files confirms this construction project (Forest Service 2004c, p. 8). The petition claims that lower quality peripheral habitat for the butterfly was disturbed. Based on information in our files regarding the extent of the disturbance associated with the snowmaking line and other improvements in 2005, as well as the mapping of Mt. Charleston blue butterfly habitat at LVSSR #2, the petition's assertion is accurate (Forest Service 2006b, pp. 1–9; Service 2006a, pp. 1–5). Outside of the core colony habitat at LVSSR #2, peripheral habitat of lower quality for the subspecies was impacted by the improvements.

(5) The petition does not present specific information regarding the extent of impact from small construction projects at Foxtail Camp in Lee Canyon. We do not have any information in our files to corroborate or refute the petition's claim regarding impacts to Mt. Charleston blue butterfly habitat at this location.

(6) The petitioner also claims that the expansion of the water system at the Youth Camp in Lee Canyon impacted habitat for the Mt. Charleston blue butterfly. This assertion is confirmed by a Forest Service report in our files (Forest Service 2002, pp. 16–18).

(7) The petition identifies a location on the LVSSR where Mt. Charleston blue butterfly habitat was lost due to modifications to a parking lot near the end of State Route 156 (The Urban Wildlands Group, Inc. 2005, p. 3). Based on data in our files, the Mt. Charleston blue butterfly was first recorded at this location during 1995 surveys (Weiss *et al.* 1997, p. 10), and the subspecies has not been observed in the area in recent years (Boyd 2005, p. 1). The petition states that approximately 2 acres (0.81 hectares) once supported a large number of host plants for the butterfly at this site (The Urban Wildlands Group, Inc. 2005, p. 3). The modifications likely occurred in 2004, when the parking area was used as a temporary storage pond for snowmaking water. Given our knowledge of the habitat requirements for the butterfly and remaining host plants around the margins of the parking area, the petition accurately states that Mt. Charleston blue butterfly habitat was impacted by these modifications.

Present destruction, modification, or curtailment of this subspecies' habitat or range is documented by numerous activities described in the petition and verified by information in our files. Of the seven claims made in the petition regarding habitat loss or modification, six were supported by information in our files: (1) Bisection of habitat by South Loop Trail and unsanctioned trails created in habitat in Kyle Canyon; (2) improvements at LVSSR #1 in Lee Canyon; (3) construction of a berm at LVSSR #2 in Lee Canyon; (4) installation and expansion of snowmaking apparatus at LVSSR #2 in Lee Canyon; (5) expansion of the water system at the Youth Camp in Lee Canyon; and (6) expansion of the parking lot at LVSSR in Lee Canyon. The petition states that the current situation of the Mt. Charleston blue butterfly is perilous, with the extant colonies all at risk of extinction (The Urban Wildlands Group, Inc. 2005, p. 2). Based on the information in the petition and our files, 15 locations have been occupied by the Mt. Charleston blue butterfly since 1928. The subspecies is presumed extirpated from 6 of the 15 locations. At another 6 locations, the butterfly's occurrence is extant, but ephemeral. The butterfly exhibits metapopulation dynamics at these locations, likely emigrating to these smaller patches of habitat from the core colonies during years when environmental conditions are favorable. The Mt. Charleston blue butterfly has not been sighted at the majority of these 6 extant ephemeral locations since 1995. Finally, 3 of the 15 locations (estimated to encompass less than 9 acres (3.6 hectares) of habitat) are currently known to be extant core colonies. Habitat loss and modification threatens all three of these occupied core colonies, as documented by the petition and verified by information in our files. We conclude that the petition presents substantial information to indicate that listing may be warranted due to the present or threatened destruction or modification of habitat or range for the Mt. Charleston blue butterfly.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Neither the petition nor information in our files provides any information pertaining to Factor B with regard to the Mt. Charleston blue butterfly.

C. Disease or Predation

Neither the petition nor information in our files provides any information pertaining to Factor C with regard to the Mt. Charleston blue butterfly.

D. Inadequacy of Existing Regulatory Mechanisms

Although the Mt. Charleston blue butterfly is not federally listed, some protections are in place, as documented in the petition. The subspecies is included in a 1998 Conservation Agreement for the Spring Mountains National Recreation Area, Clark and Nye Counties, Nevada (Conservation Agreement) signed by the State of Nevada, Forest Service, and the Service (Forest Service 1998, pp. 1–50). The Conservation Agreement described conservation actions for the butterfly on lands within the Forest Service's jurisdiction. In 2000, the 55 species that are the subject of the Conservation Agreement, including the Mt. Charleston blue butterfly, were incorporated as covered species under the Clark County Multiple Species Habitat Conservation Plan (Clark County MSHCP).

The petition makes three assertions that inadequacy of existing regulatory mechanisms is a threat to the Mt. Charleston blue butterfly: (1) Responsibilities as described by section 5.6 of the Conservation Agreement have not been met; (2) required butterfly surveys were not conducted for a project at the LVSSR in 2005; and (3) no mitigation for the loss of habitat from projects described in the petition has occurred to meet the measurable biological goals of no net unmitigated loss under the Clark County MSHCP (The Urban Wildlands Group, Inc. 2005, pp. 1–3). The following details these assertions.

(1) The petition alleges that responsibilities as described in section 5.6 of the Conservation Agreement have not been met (The Urban Wildlands Group, Inc. 2005, p. 1). This section states that the Forest Service and other Conservation Agreement signatories will ''Work with Las Vegas Ski and Snowboard Resort to develop protective strategies for sensitive ecological resources. This will include investigating options for erosion control of the Lee Canyon ski slopes with native seed mixes, including *Astragalus calycosus* var. *mancus* to enhance butterfly habitat, management of herbicides and pesticides, and a plan for eventual elimination of nonnative seeding, and management of the Three Springs area'' (The Urban Wildlands Group, Inc. 2005, p. 1; Forest Service 1998, p. 39). With a change in ownership of the LVSSR in 2004, nonnative seeding at the LVSSR was eliminated. In addition, a Forest Service decision notice dated September 13, 2004, directed the LVSSR to prepare a monitoring plan for disturbed areas, which evolved into a broader Adaptive Management Vegetation Plan (Vegetation Plan) and a specific 2005 Program of Work (Forest Service 2004a, p. 2; Forest Service 2005a, pp. 1–24; Forest Service 2005b, pp. 1–11). One purpose of this Vegetation Plan was to implement the conservation actions described in section 5.6, as well as Forest Service General Management Plan objectives to benefit numerous endemic species within the LVSSR. The Vegetation Plan will guide revegetation efforts at the LVSSR from 2005 through 2011. The objectives of this Vegetation Plan include: increase self-sustaining populations of sensitive plants species and butterfly host plants; eliminate the use and occurrence of nonnative species in the ski area; describe inventory guidelines and protocols; describe rehabilitation guidelines and protocols; describe monitoring guidelines and protocols; and facilitate maintenance, construction, and reconstruction, as well as limited expansion, of skiing opportunities and facilities (Forest Service 2005a, p. 3). Monitoring of disturbed areas and control plots, and targeted native seed collection, occurred in 2005 and 2006. On-the-ground cultivation or planting of native seed has not yet occurred. If implementation of the Vegetation Plan continues with success, the Service estimates that habitat restoration for the Conservation Agreement's species, including the Mt. Charleston blue butterfly, will be

realized in 3 to 5 years (1 to 3 more years for seed collection and cultivation, and 2 additional years for establishment of habitat). This Vegetation Plan is an important step towards meeting the objectives of section 5.6 of the Conservation Agreement, however, the Vegetation Plan was initiated in 2005 and its success is yet to be determined. Thus based on information in our files, the petition is correct that some responsibilities described in section 5.6 of the Conservation Agreement have not been initiated or completed, such as management of the Three Springs area, and on-the-ground cultivation or planting of native seed for erosion control and enhancement of butterfly habitat. However, the petition is incorrect with regard to other responsibilities under Section 5.6 of the Conservation Agreement, as some have been fulfilled or have been initiated, such as elimination of nonnative seeding, and development of the Vegetation Plan to move toward establishing native seed and butterfly host plants at the LVSSR.

(2) The petitioner alleges that butterfly surveys were not completed for a project implemented in 2005 that disturbed Mt. Charleston blue butterfly habitat at the LVSSR (The Urban Wildlands Group, Inc. 2005, p. 3). Section 1.0 of the Conservation Agreement states that the Forest Service, as a general commitment, would ''conduct pre-activity surveys for species of concern prior to taking an action'' (Forest Service 1998, p. 29). Information in our files confirms that pre-activity surveys for butterflies were not completed before either a 2005 construction project associated with replacing a snowmaking line that affected the core colony at LVSSR #1, or other LVSSR projects implemented in 2005 (Forest Service 2004c, p. 1; Forest Service 2005c, p. 7).

(3) The petitioner also asserts that no mitigation for the loss of habitat from projects described in the petition has occurred to provide for no net unmitigated loss under the Clark County MSHCP (The Urban Wildlands Group, Inc. 2005, p. 3). As a signatory to the Implementing Agreement of the Clark County MSHCP, the Forest Service committed to implementing mitigation, minimization, and monitoring actions under the Clark County MSHCP for covered species on Forest Service lands in Clark County. The Clark County MSHCP Environmental Impact Statement identifies two measurable biological goals for the Mt. Charleston blue butterfly: (a) ''No net unmitigated loss of larval host plant or nectar plant species habitat in the Spring Mountains Natural Recreation Area,'' and (b) ''Maintain stable or increasing population numbers and host and larval plant species'' (RECON 2000a, Table 2.5, pp. 2–154).

Information in our files confirms the petitioner's claim that mitigation did not occur for several projects noted in the petition, including: (a) The expansion of the water system at the Youth Camp in Lee Canyon, (b) the modification of the parking area at the LVSSR (likely in 2004), and (c) the construction of an avalanche deflection berm located at the top of the northwestern-most ski run at the LVSSR within the LVSSR #2 core colony for the Mt. Charleston blue butterfly in 2000 or 2001 (Forest Service 2002, pp. 15–18).

However, with regard to the projects implemented in 2005, there is information in our files that the Forest Service based their permitting approval for these projects on implementation of the Vegetation Plan (Forest Service 2005a, pp. 1–24). One purpose of the Vegetation Plan is to achieve mitigation for loss of habitat from various LVSSR project impacts to affected Conservation Agreement species, including the Mt. Charleston blue butterfly. As stated above, the Vegetation Plan was initiated in 2005 with monitoring of disturbed areas and control plots, as well as targeted native seed collection, in 2005 and 2006. The Forest Service and the LVSSR made the commitment to provide for habitat restoration for projects that were implemented in 2005; however, on-the-ground cultivation or planting of native seed has not yet occurred to replace the lost Mt. Charleston blue butterfly habitat. As previously stated, if implementation of the Vegetation Plan continues with success, the Service estimates that habitat restoration for the Mt. Charleston blue butterfly will be realized in 3 to 5 years (1 to 3 more years for seed collection and cultivation, and 2 additional years for establishment of habitat). Overall, it appears that there has been a current net loss of Mt. Charleston blue butterfly larval host plant or nectar plant species habitat in the Spring Mountains National Recreation Area as a result of specific projects. With successful implementation of the Vegetation Plan, measurable biological goals of the MSHCP may be met within 5 years.

In summary, the petition states the following three points: (1) Responsibilities have not been met under section 5.6 of the Conservation Agreement; (2) pre-activity butterfly surveys were not conducted for a project implemented in 2005; and (3) no mitigation for the loss of habitat from projects described in the petition has occurred. As described previously, certain responsibilities have been initiated or met under section 5.6 of the Conservation Agreement, although others have not yet been initiated or fully implemented. Pre-activity butterfly surveys were not conducted prior to multiple construction projects at the LVSSR in 2005, as described in the petition and verified by information in our files. Mitigation for site-specific impacts to butterfly habitat have been implemented for some projects, and not implemented for others. Now it appears that there has been a net loss of habitat containing Mt. Charleston blue butterfly larval host plant or nectar plant species in the Spring Mountains Natural Recreation Area as a result of implementation of specific projects; however, due to actions recently initiated, habitat restoration should be realized in the future. Despite these recent restoration efforts, the interim loss may still be substantial due to restricted size of the occupied habitat and the uncertain population status of the subspecies.

Although there are existing agreements that intended to conserve the Mt. Charleston blue butterfly, to date these agreements either have not been implemented or the limited implementation does not appear to have provided sufficient conservation for this subspecies. Given the uncertain population status of and 2006 survey results for the Mt. Charleston blue butterfly, it is necessary for the Service to re-evaluate the mechanisms currently in place to protect this subspecies. Based on the above information, we find that the petition presents substantial information to indicate that listing may be warranted due to the inadequacy of existing regulatory mechanisms to protect the Mt. Charleston blue butterfly.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petitioner describes the threat to Mt. Charleston blue butterfly habitat resulting from vegetation succession and introduced plant species (The Urban Wildlands Group, Inc. 2005, p. 2). The petition provides two illustrations of this threat: (1) The loss of habitat near Old Town in Kyle Canyon due to shading of the larval host plant (as a result of vegetative succession) and introduction of nonnative species including alfalfa; and (2) the loss of the butterfly from Lee Meadow in Lee Canyon (The Urban Wildlands Group, Inc. 2005, p. 3). Based on information in our files, Weiss *et al.* (1995, p. 5) concluded host plant

densities in Lee Meadow appeared insufficient to support the Mt. Charleston blue butterfly. Decreases in the quality or abundance of larval host plant and nectar sources can be caused by changes in plant community composition, particularly changes associated with succession, disturbance, and grazing regimes (Murphy *et al.* 1990, p. 43). Changes in vegetation structure and composition associated with succession may have contributed to the loss of Torrey's milkvetch, and, therefore, to the loss of the Mt. Charleston blue butterfly at historic sites in Kyle Canyon (Boyd and Austin 2002, p. 13). Based on information in our files, Weiss *et al.* (1997, p. 33) describe the impact of erosion control plantings of grasses and alfalfa (*Medicago sativa*) on the butterfly's host plants at the LVSSR as a butterfly management issue due to competition with butterfly host plants and potential structural changes to butterfly habitat. Further information in our files confirmed that the LVSSR ski runs were seeded with both cultivated varieties of native and nonnative grasses and introduced forbs in the 1970s and 1980s (Titus and Landau 2003, pp. 1–3).

The petitioner also mentions wild horse grazing as an issue and notes that wild horses are nearly always present at one of the core colonies of the butterfly (LVSSR #1) (The Urban Wildlands Group, Inc. 2005, p. 2). The petition does not provide any supporting documentation to describe this threat or the extent of impact from the threat to the Mt. Charleston blue butterfly. Based on information in our files, the Clark County MSHCP identified trampling by wild horses and livestock grazing as potential threats to the subspecies and other butterflies (RECON 2000b, p. B–158). The extent of any impact from trampling and grazing to the Mt. Charleston blue butterfly and its host plants is undocumented or unknown.

There is insufficient information in the petition or our files to adequately characterize the threat of vegetation succession, nonnative plant species, or wild horses at the locations identified in the petition or across the range of the subspecies. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing the Mt. Charleston blue butterfly may be warranted due to the other natural or manmade factors described in the petition.

Finding

We have reviewed and evaluated the five listing factors with regard to the Mt. Charleston blue butterfly, based on the information in the petition and in our files. On the basis of this review and evaluation, we find that the petition does present substantial information to indicate that listing the Mt. Charleston blue butterfly as threatened or endangered may be warranted.

The Mt. Charleston blue butterfly is known only from the high elevations of the Spring Mountains in Clark County Nevada, where it depends upon its larval host plant, Torrey's milkvetch. The range of the Mt. Charleston blue butterfly is centered on the east side of the Spring Mountains in Kyle and Lee Canyons, on lands managed by the Forest Service in the Spring Mountains National Recreation Area of the Humboldt-Toiyabe National Forest. Based on historic records and surveys, the subspecies has occupied 15 locations since 1928. Currently, the Mt. Charleston blue butterfly is known to occupy three core colonies in Kyle and Lee Canyons. Two of the core colonies of the subspecies in Lee Canyon total 3.7 acres (1.5 hectares), while the size of the core colony in Kyle Canyon is estimated at 5 acres (2 hectares); thus, the Mt. Charleston blue butterfly is currently known to occupy less than 9 acres (3.6 hectares) of habitat.

There is substantial information presented in the petition and verified by information in our files that listing may be warranted for the Mt. Charleston blue butterfly due to the present destruction, modification, or curtailment of the subspecies' habitat or range (Factor A) and the inadequacy of existing regulatory mechanisms (Factor D). Present habitat destruction and modification to the Mt. Charleston blue butterfly and Torrey's milkvetch was documented at the LVSSR in Lee Canyon from multiple projects implemented since 2000, including construction of a berm within a core colony, modifications to a parking lot, and replacement of snowmaking lines (one of which affected a core colony). In addition, expansion of the water system at the Youth Camp in Lee Canyon affected the butterfly's habitat. Finally, a core colony in Kyle Canyon is bisected by the South Loop Trail and is affected by an additional unsanctioned trail.

The petition states that the current situation of the Mt. Charleston blue butterfly is perilous with the extant colonies all at risk of extinction (The Urban Wildlands Group, Inc. 2005, p. 2). Based on the information in the petition and our files, 15 locations have been occupied by the Mt. Charleston blue butterfly since 1928. The subspecies is presumed extirpated from 6 of the 15 locations. At another 6 locations, the butterfly's occurrence is extant, but ephemeral. The butterfly exhibits metapopulation dynamics at these locations, likely emigrating to these smaller patches of habitat from the core colonies during years when environmental conditions are favorable. The Mt. Charleston blue butterfly has not been sighted at the majority of these 6 extant ephemeral locations since 1995. As described in the petition and verified by information in our files, the butterfly's persistently occupied range is currently known to be restricted to three locations or colonies on approximately 9 acres (3.6 hectares), and all three locations are threatened by habitat loss and modification. We are further concerned that formal surveys in 2006 were unable to identify any adult butterflies across the subspecies' known range, including at the three core colonies. While we do not consider the species extirpated from the three core colonies, successful reproduction and emergence of pupae in 2007 is critical for this subspecies.

There is substantial information presented in the petition and verified by information in our files that listing may be warranted for the Mt. Charleston blue butterfly due to the inadequacy of existing regulatory mechanisms (Factor D). The petition describes and information in our files verifies that some responsibilities under the Conservation Agreement (Sections 1.0 and 5.6) have not been met. However, some responsibilities under the Conservation Agreement, such as elimination of non-native seeding at the LVSSR, have been met and still others have recently been initiated. Furthermore, the petition describes and information in our files verifies that mitigation for site-specific impacts to butterfly habitat have been implemented for some projects, and not implemented for others. It appears that currently there has been a net loss of habitat containing Mt. Charleston blue butterfly larval host plant or nectar plant species in the Spring Mountains National Recreation Area as a result of implementation of specific projects. Due to actions recently initiated, however, habitat restoration should be realized in the future. Although there are existing agreements in place that intended to conserve the Mt. Charleston blue butterfly, to date these agreements either have not been implemented or the limited implementation does not appear to have provided sufficient conservation for this subspecies. Given the uncertain population status of and the 2006 survey results for the Mt. Charleston blue butterfly, it is necessary for the Service to re-evaluate the mechanisms currently in place to protect this subspecies.

In summary, based on listing factors A and D, we conclude that the petition has presented substantial information that listing may be warranted for the Mt. Charleston blue butterfly. We will initiate a status review to determine whether listing the subspecies as threatened or endangered is warranted.

References Cited

A complete list of all references cited herein is available, upon request, from the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is the Nevada 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: May 15, 2007.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

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Notices

Federal Register

Vol. 72, No. 103

Wednesday, May 30, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0066]

Notice of Request for Extension of Approval of an Information Collection; Credit Account Approval for Reimbursable Services

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 credit account approval for reimbursable services.

DATES: We will consider all comments that we receive on or before July 30, 2007.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0066 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0066, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0066.

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 credit account approval for reimbursable services, contact Mrs. Kris Caraher, User Fees Section Head, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737; (301) 734–5743. 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: Credit Account Approval for Reimbursable Services.

OMB Number: 0579–0055.

Type of Request: Extension of approval of an information collection.

Abstract: The services of a Federal inspector to clear imported and exported agricultural commodities for animal and plant health purposes are paid for by user fees during regular working hours. If an importer wishes to have shipments cleared at other hours, such services will usually be provided on a reimbursable overtime basis, unless already covered by a user fee. Exporters wishing cargo to be certified during nonworking hours may also utilize this procedure.

Many importers and exporters who require inspection services are repeat customers who request that we bill them. We need to collect certain information to conduct a credit check on prospective applicants to ensure creditworthiness prior to extending credit services and to prepare billings. Also, the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3332), requires that agencies collect tax identification numbers from all persons doing business with the Government for purposes of collecting delinquent debts. APHIS Form 192 is used to collect this information and must be completed before credit is extended.

We are asking the Office of Management and Budget (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 0.25 hours per response.

Respondents: Importers, exporters, or brokers who wish to set up an account for billing of inspection services provided during nonworking hours.

Estimated annual number of respondents: 256.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 256.

Estimated total annual burden on respondents: 64. (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 24th day of May 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–10323 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0017]

Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), is sponsoring a public meeting on June 5, 2007. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Thirtieth Session of the Codex Alimentarius Commission (CAC), which will be held in Rome, Italy, July 2–7, 2007. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 30th Session of CAC and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, June 5, 2007, 1–4 p.m.

ADDRESSES: The public meeting will be held in Room 107–A, Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Washington, DC 20250. Documents related to the 30th Session of CAC will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Manager for Codex, F. Edward Scarbrough, Ph.D., U.S. Codex Office, Food Safety and Inspection Service, USDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address *uscodex@fsis.usda.gov.*

For Further Information About the 30th Session of the CAC Contact: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, Telephone: (202) 720–2057, Fax: (202) 720–3157; e-mail: *ed.scarbrough@fsis.usda.gov.*

For Further Information about the Public Meeting Contact: Jasmine Matthews, Program Analyst, U.S. Codex Office, Telephone: (202) 205–7760, Fax: (202) 720–3157, e-mail: *jasmine.matthews@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Alimentarius Commission is responsible for making proposals to the Directors-General of FAO and WHO on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:

(a) Protecting the health of the consumers and ensuring fair practices in the food trade;

(b) promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations;

(c) determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;

(d) finalizing standards elaborated under (c) above and publishing them in a Codex Alimentarius either as regional or world wide standards, and

(e) Amending published standards, after appropriate survey in the light of developments.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 30th Session of the CAC will be discussed during the public meeting:

- Report by the Chairperson on the 59th Session of the Executive Committee
- Reports of FAO/WHO Regional Coordinating Committees
- Amendments to the Procedural Manual
- Amendments to the Rules of Procedure
- Other amendments to the Procedural Manual
- Draft Standards and Related Texts at Step 8 of the Procedure (including those submitted at Step 5 with a recommendation to omit Steps 6 and 7 and those submitted at Step 5 of the Accelerated Procedure)
- Proposed Draft Standards and Related Texts at Step 5
- Revocation of existing Codex Standards and Related Texts
- Proposals for the Elaboration of new Standards and Related Texts and for the Discontinuation of Work
- Financial and Budgetary Matters—Proposed Budget 2008/2009
- Proposed Schedule of Codex Meetings 2007–2009
- Strategic Planning of the Codex Alimentarius Commission
- Implementation of the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards
- General Implementation Status
- Review of Codex Committee Structure and Mandates of Codex Committees and Task Forces
- Matters arising from the Reports of Codex Committees and Task Forces
- Relations between the Codex Alimentarius Commission and other International Organizations
- FAO/WHO Project and Trust Fund for Enhanced Participation in Codex
- Other Matters arising from FAO and WHO
- Appointment of Regional Coordinators
- Election of Chairperson, Vice-Chairpersons and other Members of the Executive Committee
- Designation of Countries responsible for Appointing the Chairpersons of Codex Committees and Task Forces

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see For Further Information About The 30th Session of the CAC Contact).

Public Meeting

At the June 5, 2007 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Manager for Codex, F. Edward Scarbrough (see **ADDRESSES**). Written comments should state that they relate to activities of the 30th Session of the CAC.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/.* FSIS also will

make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices.

Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on May 24, 2007.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. E7–10326 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0019]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and subcommittees on June 4–8, 2007. The Committee will discuss: (1) Determination of Cooking Parameters for Safe Seafood for Consumers, (2) Assessment of the Food Safety Importance of *Mycobacterium avium* subspecies paratuberculosis, (3) Determination of the Most Appropriate Technologies for the Food Safety and Inspection Service to Adopt in Performing Routine and Baseline Microbiological Analyses, and (4) Parameters for Inoculated Pack Challenge Study Protocols.

DATES: The full Committee will hold open meetings on Monday, June 4, 2007, 1 p.m. to 2:30 p.m., and Friday, June 8, 9 a.m. to 1 p.m. The Subcommittee on Determination of Cooking Parameters for Safe Seafood for Consumers will hold an open meeting on Tuesday, June 5, 2007, from 8:30 a.m. to 5 p.m. The Subcommittee on Determination of the Most Appropriate Technologies for the Food Safety and Inspection Service to Adopt in Performing Routine and Baseline Microbiological Analyses will hold open meetings on Tuesday and Wednesday, June 5–6, 2007, from 8:30 a.m. to 5 p.m. The Subcommittee on Assessment of the Food Safety Importance of *Mycobacterium avium* subspecies *paratuberculosis* will hold open meetings on Wednesday and Thursday, June 6–7, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The June 5–7, 2007, subcommittee meetings will be held at the Aerospace Building, 901 ''D'' St., SW., Rooms 369–371, Washington, DC 20024. The June 4 and June 8, 2007, full Committee meetings will be held in the conference room at the south end of the U. S. Department of Agriculture (USDA) cafeteria located in the South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All documents related to the full Committee meetings will be available for public inspection in the Food Safety and Inspection Service (FSIS) Docket Room, 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/.*

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Internet Web page at *http://www.fsis.usda.gov/News/Meetings_&_Events/.* Please note that the meeting agenda is subject to change due to the time required for Committee discussions, thus, sessions could start or end earlier or later than anticipated. Please plan accordingly if you would like to attend a particular session or participate in a public comment period.

Also, the official transcripts of the June 4 and 8, 2007, full Committee meetings, when they become available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/About/NACMCF_Meetings/.*

The mailing address for the contact person below, Karen Thomas-Sharp is: Food Safety and Inspection Service, U. S. Department of Agriculture, Office of Public Health Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments at the June 4 and/or June 8, plenary sessions should contact Karen Thomas-Sharp, phone (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas-sharp@fsis.usda.gov*, or at the mailing address above. Persons requiring a sign language interpreter or other special accommodations should notify Mrs. Thomas-Sharp by May 29, 2007.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/About/NACMCF_Charter/.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Curt Mann, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair; Dr. Robert E. Brackett, Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Gerri Ransom, FSIS, is the Executive Secretariat.

At the subcommittee meetings the week of June 5–7, 2007, the groups will discuss:

• The determination of cooking parameters for safe seafood for consumers,

• Assessment of the food safety importance of *Mycobacterium avium* subspecies *paratuberculosis,* and

• The determination of the most appropriate technologies for the Food Safety and Inspection Service to adopt in performing routine and baseline microbiological analyses.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in electronic format on the FSIS Web page, as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: NACMCF documents and comments posted on the FSIS Web site are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy.

In order to meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, etc.). These modifications only affect the online copies of the documents.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on May 24, 2007.

David P. Goldman,

Acting Administrator.

[FR Doc. E7–10321 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS 2007–0018]

Disposition of Hogs and Chickens From Farms Identified as Having Received Pet Food Scraps Contaminated With Melamine and Melamine-Related Compounds and Offered for Slaughter

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this notice to articulate its position on the slaughter for human food of hogs and chickens from farms identified as having purchased or otherwise received pet food scraps that contain melamine and melamine-related compounds. The contaminated pet food scraps were used to supplement animal feed on farms in several States. The results of an interim safety/risk assessment indicate that, based on currently available data and information, the consumption of pork, poultry, eggs, and domestic fish products from animals inadvertently fed animal feed contaminated with melamine and melamine-related compounds is very unlikely to pose a human health risk.

Based on the findings of the interim safety/risk assessment, as well as the results of validated testing for melamine concentration that has been conducted on tissue samples of hogs and chickens exposed to the adulterated feed, FSIS has determined that pork and poultry products from all animals identified as having been fed animal feed containing contaminated pet food scraps are ''not adulterated'' and are thus eligible to receive the mark of inspection. All such animals that were being held on farms have been released and may be offered for slaughter for human food.

DATES: Comments on this **Federal Register** notice must be received by August 28, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on the findings in this notice. Comments may be submitted by any of the following methods:

• Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2007–0018 to submit or view public comments and to view supporting and related materials available electronically.

• Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

• Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

Individuals who do not wish FSIS to post their personal contact information — mailing address, e-mail address, telephone number — on the Internet may leave the information off their comments. All submissions received by mail or electronic mail must include the Agency name and docket number FSIS–2007–0018. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Deputy Assistant

Administrator, Office of Policy, Program, and Employee Development (OPPED), (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is responsible for ensuring that meat and poultry products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These two statutes require Federal inspection and provide for Federal regulation of meat and poultry products prepared for distribution in commerce for use as human food.

Under the Acts, FSIS inspection personnel apply the mark of inspection to meat and poultry products if they find upon inspection that these articles are not adulterated (21 U.S.C. 455, 457; 21 U.S.C. 604, 606, 607). The Acts prohibit the sale or transportation in commerce of meat and poultry products capable of use as human food that are adulterated or misbranded or that have not been inspected and passed (21 U.S.C. 458 (a)(2); 21 U.S.C. 610(c)). The Acts also authorize FSIS to take certain actions to remove from commerce meat or poultry products that the Agency has reason to believe are adulterated or misbranded, or that have not been inspected (21 U.S.C. 467(a),467(b); 21 U.S.C. 672,673). Under the Acts, a meat or poultry product is adulterated if, among other circumstances, it bears or contains any poisonous or deleterious substance that may render it injurious to health (21 U.S.C. 453(g)(1), 601(m)(1)); it bears or contains (by reason of administration of any substance to the live animal or poultry, or otherwise) any added poisonous or added deleterious substance which may in the judgment of the Secretary render it unfit for human food (21 U.S.C. 453(g)(2), 601(m)(2)); if it is for any reason unsound, unhealthful, unwholesome, or unfit for human food (21 U.S.C. 453(g)(3), 601(m)(3)); or if it has been prepared, packaged, or held under insanitary conditions whereby it may have been rendered injurious to health (21 U.S.C. 453(g)(4), 601(m)(4)).

On April 26, 2007, FSIS and the U.S. Food and Drug Administration (FDA) announced that hogs on farms in certain States had consumed animal feed supplemented with pet food scraps contaminated with melamine and melamine-related compounds. On April 30, 2007, the agencies announced that chickens on certain farms in Indiana had also been fed poultry feed supplemented with melamine-contaminated pet food scraps. FSIS learned of the adulterated feed during the course of an ongoing FDA investigation of pet food associated with illnesses and deaths in cats and dogs. The pet food was found to contain melamine or melamine-related compounds (cyanuric acid, ammelide, and ammeline).

Based on the available science and information, FDA investigators believed that the combination of melamine and melamine-related compounds, particularly cyanuric acid, caused the formation of crystals in the kidneys that led to kidney failure in some of the pets that had consumed the adulterated pet food. The investigation found that the source of the melamine and melamine-related compounds in the pet food was products, labeled as rice protein concentrate and as wheat gluten, which had been imported from China. The investigation also revealed that scraps from the adulterated pet food had been sold to hog and chicken producers and feed mills, where they were used to supplement animal feed. FDA then notified FSIS of its findings regarding animal feed.

When FSIS and FDA announced that they had learned that hog and chicken farms in various States had purchased or otherwise received pet food scraps contaminated with melamine and melamine-related compounds, the agencies noted that some of the hogs and chickens that had consumed feed supplemented with the contaminated pet food scraps may have been slaughtered and their products distributed in commerce. At that time, the agencies also explained that they would work with States and industry to take the appropriate action with regard to the disposition of these products.

Actions Taken Based on Data Concerning the Consumption of Feed Supplemented With Adulterated Pet Food

When FSIS learned that hogs and chickens had consumed feed that had been supplemented with pet food scraps contaminated with melamine and melamine-related compounds, the Agency concluded that risk to human health from consuming pork or poultry products from these animals was likely to be very low. This conclusion was based on information that indicated that the concentration of melamine and melamine-related compounds in the adulterated feed was likely very low due to dilution. However, because the animal feed in question was adulterated, and given the information that was available at the time, FSIS could not rule out the possibility that pork and poultry products produced from hogs and chickens that consumed the adulterated feed could also be adulterated. Therefore, all animals that had been identified as having consumed feed supplemented with pet food scraps contaminated with melamine and melamine-related compounds and that were not yet offered for slaughter were placed under State quarantine or voluntarily held by the producers.

In a press release issued on May 7, 2007, FDA and FSIS announced the results of a human health risk assessment estimating the risk to human health from melamine and melamine-related compounds through the consumption of edible animal products derived from poultry, pork, and fish. This human health risk assessment has since been updated with new information and is hereafter referred to as the interim safety/risk assessment. The interim safety/risk assessment concludes that, based on currently available data and information, the consumption of pork, poultry, eggs, and domestic fish products from animals inadvertently fed animal feed contaminated with melamine and melamine-related compounds is very unlikely to pose a human health risk. In a Notice of Availability published in this issue of the **Federal Register**, FDA is announcing the availability of this ''Interim Melamine and Analogues Safety/Risk Assessment.''

In the May 7, 2007, press release, FDA and FSIS also announced that several samples of feed from farms identified as having received contaminated pet food scraps had been tested by Federal laboratories or state laboratories using approved methods and the tests did not detect the presence of melamine and melamine-related compounds. The negative tests most likely reflected the fact that, because of dilution, the amount of melamine and melamine-related compounds present in the feed was so small that the compounds were no longer detectable by the approved testing method.

After considering the new information presented in the interim safety/risk assessment, together with the recent test results that found that melamine concentrations in some of the adulterated feed was below the level of detection, FSIS determined that it would be appropriate at that time for the Agency to permit, under certain conditions, hogs and chickens that had been identified as having consumed adulterated feed to be offered for slaughter. Therefore, at that time, FSIS decided to allow hogs and chickens identified as having consumed adulterated feed to be offered for slaughter for human food if the feed had

been tested by a Federal laboratory or state laboratory using approved methods and the test did not detect the presence of melamine and melamine-related compounds. FSIS concluded that under these conditions, FSIS would be able to find that pork and poultry products from animals that had consumed adulterated feed were ''not adulterated'' and thus eligible to receive the mark of inspection.

At that time, hogs and chickens that had been identified as having consumed feed that had tested positive for melamine and melamine-related compounds, as well as animals that had been identified as having consumed feed supplemented with contaminated pet food scraps but none of the adulterated feed was available for testing, continued to be held under State quarantine or voluntarily by the producers. The disposition of these animals was to be determined on the basis of information from on-going investigations of hogs and chickens identified as having consumed adulterated feed. As part of these investigations, samples of animal feed, urine, and tissues were collected and analyzed for melamine concentration.

In addition, based on the information that was available at the time, including information in the interim safety/risk assessment, FSIS concluded that it did not have sufficient evidence to demonstrate that the pork or poultry products that had already been distributed in commerce were injurious to health, unfit for human food, or otherwise adulterated under the FMIA or PPIA. Therefore, FSIS decided that it would not take action to remove from commerce any pork or poultry products that were produced from hogs and chickens that had consumed feed supplemented with pet food scraps contaminated with melamine and melamine-related compounds, but that had been slaughtered and processed prior to May 7, 2007. Thus, FSIS did not request that companies voluntarily recall the affected products from commerce. Information on the safety of pork and poultry from animals inadvertently fed adulterated feed that has become available since that time and is now reported in the interim safety/risk assessment further affirms this decision.

Actions Taken in Response to Tissue Test Results

As discussed above, as part of the on-going investigations of hogs and chickens identified as having consumed feed supplemented with pet food scraps contaminated with melamine and melamine-related compounds, samples of animal feed, urine, and tissues were collected and analyzed for melamine concentration. Information from these ongoing investigations is being used to examine the relationship between melamine levels in feed and the levels in animal tissues, assess the changes in melamine level in the animals over time, and compare the level found in animals and feed with concentrations that could pose a risk to humans.

On May 12, 2007, FSIS completed its validation of the methodology used to detect melamine concentration in pork tissues. The current analytical method for measuring melamine concentrations in pork can screen for melamine concentrations in pork tissue at 50 ppb and above. It should be noted that 50 ppb represents a conservative estimate for the method employed. All pork samples analyzed to date have had melamine concentrations below the validated 50 ppb screening level (ranges measured were estimated to be from 9 to 12 ppb), including samples from hogs identified as having consumed the highest percentage of pet food scraps, as to which the hog feed was composed primarily, if not exclusively, of the contaminated pet food scraps.

On May 15, 2007, USDA issued a press release that announced that results of testing conducted on tissue samples from hogs confirm that meat from hogs fed animal feed supplemented with pet food scraps containing melamine and melamine-related compounds is safe for human consumption. The press release also announced that hogs being held on farms because they had consumed adulterated feed would be released and approved for slaughter and processing into human food. The press release explained that the interim safety/risk assessment had been updated to reflect the melamine concentration for pork of 50 ppb screening level. The conclusion of the interim safety/risk assessment did not change.

Subsequent to the development of the validated testing method for hog tissue, FSIS validated the test methodology used to screen for melamine concentration levels in poultry tissue at the 50 ppb level. All poultry tissue samples analyzed to date have had melamine concentrations below 50 ppb. On May 18, 2007, a USDA press release announced that the validated test for poultry confirms the safety of eating meat from chickens fed poultry feed supplemented with pet food scraps containing melamine and melamine-related compounds. The press release also announced that, based on the results of the tests, approximately 80,000 birds that were being held on farms in Indiana were to be released and approved for slaughter and processing into human food.

Thus, as announced on May 15, 2007, regarding hogs, and on May 18, 2007, regarding chickens, FSIS has decided to allow all animals identified as having consumed pet food scraps contaminated with melamine and melamine-related compounds to be offered for slaughter. Based on the results of the measured melamine concentration in pork and poultry tissue samples from animals exposed to adulterated feed, together with the findings of the interim safety/risk assessment, FSIS had determined that it is able to find that pork and poultry products from animals that have consumed feed that contains pet food scraps contaminated with melamine and melamine-related compounds are ''not adulterated'' and thus eligible to receive the mark of inspection as required under the FMIA and PPIA.

At the time of publication of this **Federal Register** notice, all hogs and chickens that were previously under State quarantine or being held voluntarily by the producers because they had been identified as having consumed adulterated feed have been released.

Request for Comments

FSIS requests comments on the findings articulated by FSIS in this **Federal Register** notice, and specifically on whether the FSIS findings are appropriate to protect public health. Comments on the interim safety/risk assessment should be submitted to FDA as instructed elsewhere in this issue of the **Federal Register**.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this document, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2007_Notices_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals

who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*.

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password-protect their account.

Done at Washington, DC, on May 23, 2007.

David Goldman,

Acting Administrator.

[FR Doc. 07–2649 Filed 5–25–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; Big Bend Ridge Vegetation Management Project and Timber Sale Supplement Environmental Impact Statement and Proposed Targhee Revised Forest Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Caribou-Targhee National Forest proposes to supplement the Big Bend Ridge Vegetation Management Project and Timber Sale analysis and to consider amending the Targhee Revised Forest Plan with regard to old growth and aspen. The supplement will provide additional analysis and disclosure of environmental effects.

DATES: Comments concerning the scope of the analysis must be received within 45 days from the date of this publication. The draft supplemental environmental impact statement is expected in September 2007. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final supplemental environmental impact statement is expected in early 2008.

ADDRESSES: Send written comments to Robbin Redman, Forest Planner, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Electronic comments can be submitted in rich text format (.rtf), or Word (.doc) to *comments-intermtn-caribou-targhee@fs.fed.us.*

For further information, mail correspondence to Robbin Redman, Forest Planner, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401 or call (208) 557–5821.

FOR FURTHER INFORMATION CONTACT: Robbin Redman, Forest Planner, Caribou-Targhee National Forest, USDA, (see address above).

SUPPLEMENTARY INFORMATION: The Forest Service, working with the public, developed the Big Bend Ridge Vegetation Management Project and Timber Sale over numerous years beginning in 1998. The process included publishing a Notice of Intent (NOI), seeking comments (scoping) on the proposed project and also seeking comments on the Draft EIS that included various alternatives for the project. On December 12, 2003 a Record of Decision selecting Alternative C was signed by the Forest Supervisor. This decision was appealed and upheld by the Intermountain Regional Forester.

After the ROD was upheld on appeal, a Complaint was filed in Idaho District Court. In the Complaint the Plaintiffs sought to enjoin the Big Bend Vegetation Management Project and Timber Sale project. The Court did not enjoin the Big Bend Vegetation Management Project and Timber Sale in its November 2004 ruling stating the logging was not imminent. The Court did enjoin the Big Bend Ridge Vegetation Project and Timber Sale on September 28, 2005 in its Memorandum Decision and Order when it determined the logging was imminent.

To address the Court's decision on the Big Bend Ridge Vegetation Project and Timber Sale, the Forest has completed a draft vegetation assessment of old growth and aspen for the Targhee National Forest. This preliminary information revealed that more clarification and guidance in the Targhee Revised Forest Plan (TRFP) is needed to assess, monitor, and manage old growth and aspen forests, and the proposed Targhee amendment is a result of this assessment.

Purpose and Need for Action

New information and a court ruling on the Big Bend Ridge Vegetation Management Project has shown that more clarification and guidance to assess, monitor, and manage old growth forest is needed. The Forest has determined a need to supplement the Big Bend Ridge Vegetation Management Project and Timber Sale analysis and to consider updating the Targhee Revised Forest Plan (TRFP) with regard to managing old growth, and aspen forests. This draft assessment will be used in the Forest's review of the Big Bend Ridge Vegetation Management Project and Timber Sale and incorporated into the DSEIS and FSEIS for the project. In the SEIS process for the Big Bend Ridge Vegetation Management Project and Timber Sale, the Forest will consider amending the TRFP as needed to address clarification of old growth forest and aspen.

The purpose and need for the Big Bend Ridge Vegetation Management Project and Timber Sale is: (1) Need for ecosystems and their components to be resilient to disturbances to structure, composition and processes at appropriate landscape scales. (2) Need to improve overall representation of forested age classes across the landscape over the long-term. (3) Need to maintain and regenerate declining species (at risk). (4) Need to provide for a sustained yield of forest products.

Proposed Action

The Forest will supplement the analysis for the Big Bend Ridge Vegetation Management Project and Timber Sale with regard to old growth, and aspen. The Forest also proposes to amend the TRFP to make it consistent regarding old growth, and aspen.

The Forest proposes to develop Desired Future Conditions for old growth, and aspen that would be incorporated into the Targhee Revised Forest Plan. The Forest also proposes to remove the current guidance for old growth/late seral management found on page III–12–13 #6 of the Targhee Revised Forest Plan.

The Big Bend Ridge Vegetation Management Project includes the following: harvesting by thinning from below and also some limited sanitation improvement harvest, planting a limited amount of trees (approximately 200 acres), closing some non-system roads before and after harvest, relocating a specific road, some maintenance of roads used in the harvest activities, fencing some aspen units if needed, and some temporary road construction with rehabilitation after harvest.

Possible Alternatives

The Forest has developed the Proposed Action for the TRFP amendment as discussed above and the no-action alternative.

Responsible Official

The responsible official is: Lawrence Timchak, Forest Supervisor, Caribou-

Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401.

Nature of Decision To Be Made

Given the purpose and need, the deciding officer will decide whether or not to make a new decision on the Big Bend Ridge Vegetation Management Project and Timber Sale and whether to amend the Targhee Revised Forest Plan.

Scoping Process

The Forest is now seeking comments on this proposal and will seek comments on the Draft Supplemental Environmental Impact Statement for the Big Bend Ridge Vegetation Project and Timber Sale and the proposed TRFP amendment when it becomes available.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the supplemental environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplemental environmental impact statement will be prepared for comment. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the 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 comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft supplemental environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 23, 2007.

Lawrence Timchak,

Forest Supervisor.

[FR Doc. E7–10358 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of the Grants to Assist Small, Minority Producer Program Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service announces the availability of approximately $1.1 million competitive grant funds for fiscal year (FY) 2007 for cooperatives and association of cooperatives to assist small, minority agricultural producers. USDA Rural Development Cooperative Programs hereby requests proposals from eligible cooperatives and associations of cooperatives interested in a competitively awarded grant. The cooperatives and associations of cooperatives will use the grant money to fund technical assistance to small, minority agricultural producers in rural areas. The maximum award per grant is $175,000.

DATES: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 30, 2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

Electronic copies must be received by July 30, 2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

ADDRESSES: Application materials for the Small, Minority Producers Grant Program (SMPG) may be obtained at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* or by contacting the applicant's USDA Rural Development State Office at (202) 720–4323 and pressing ''1''.

Submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Web site. Submit completed paper applications for a grant to the applicant's State Office as follows:

A list of Rural Development State Offices follows:

Alabama
- USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400.

Alaska
- USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705.

Arizona
- USDA Rural Development State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8701.

Arkansas
- USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200.

California
- USDA Rural Development State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5800.

Colorado
- USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2915.

Delaware-Maryland
- USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580.

Florida/Virgin Islands
- USDA Rural Development State Office, P. O. Box 147010, 4440 NW. 25th Place, Gainesville, FL 32614–7010, (352) 338–3402.

Georgia
- USDA Rural Development State

Office, Stephens Federal Building 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162.

Hawaii
USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380.

Idaho
USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600.

Illinois
USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200.

Indiana
USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100.

Iowa
USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663.

Kansas
USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604, (785) 271–2700.

Kentucky
USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300.

Louisiana
USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920.

Maine
USDA Rural Development State Office, P.O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405 (207) 990–9160.

Massachusetts/Rhode Island/Connecticut
USDA Rural Development State Office, 451 West Street, Amherst, MA 01002 (413) 253–4300.

Michigan
USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5188.

Minnesota
USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street St, Paul, MN 55101, (651) 602–7800.

Mississippi
USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316.

Missouri
USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976.

Montana
USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59718, (406) 585–2580.

Nebraska
USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North Lincoln, NE 68508, (402) 437–5551.

Nevada
USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222.

New Jersey
USDA Rural Development State Office, 5th Floor North, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico
USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950.

New York
USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Syracuse, NY 13202, (315) 477–6400.

North Carolina
USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000.

North Dakota
USDA Rural Development State Office, Federal Building, Room 208, P.O. Box 1737, 220 East Rosser, Bismarck, ND 58502–1737 (701) 530–2037.

Ohio
USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2500, Ext. 4.

Oklahoma
USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000.

Oregon
USDA Rural Development State Office, 1201 Northeast Lloyd Boulevard, Suite 801, Portland, OR 97232, (503) 414–3300.

Pennsylvania
USDA Rural Development State Office, 1 Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2262.

Puerto Rico
USDA Rural Development State Office, IBM Building, Suite 601, 654 Munoz Rivera Avenue, San Juan, Puerto Rico 00936–6106, (787) 766–5095.

South Carolina
USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163.

South Dakota
USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100.

Tennessee
USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084 (615) 783–1300.

Texas
USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street , Temple, TX 76501 (254) 742–9700.

Utah
USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138 (801) 524–4324.

Vermont/New Hampshire
USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602 (802) 828–6080.

Virginia
USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229 (804) 287–1552.

Washington
USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715 (360) 704–7715.

West Virginia
USDA Rural Development State Office, 75 High Street, Suite 320, Morgantown, WV 26505 (304) 284–4860.

Wisconsin
USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481 (715) 345–7600.

Wyoming
USDA Rural Development State Office, Dick Cheney Federal Building, P.O. Box 11005, 100 East B Street, Room 1005, Casper, WY 82602–5006 (307) 233–6700.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* for application assistance or contact the USDA Rural Development State Office. Applicants are encouraged

to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Small, Minority Producer Grant.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.771

Dates: Application Deadline: Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 30, 2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

Complete electronic copies must be received by July 30, 2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

Programs Affected

This will not affect other programs in USDA Rural Development.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Revised Continuing Resolution, 2007, Public Law 110–5 dated February 15, 2007 which authorizes not to exceed $1,473,000 for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority agricultural producers and whose governing board and/or membership is comprised of at least 75 percent minority members. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

The primary objective of this grant program is to assist small, minority agricultural producers through cooperatives and associations of cooperatives. USDA Rural Development Cooperative Programs will competitively award grants to fund cooperatives and/or associations of cooperatives to provide technical assistance to small, minority agricultural producers in rural areas. The maximum award amount per grant is $175,000.

Definitions

Agency—Rural Business-Cooperative Service, an agency of the United States Department of Agriculture (USDA) Rural Development or a successor agency.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Cooperative Programs—The office within USDA Rural Development, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs identified in USDA regulations.

Economic Development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Feasibility Study—An analysis of the economic, market, technical, financial, and management feasibility of a proposed project.

Minority—Individuals who have been subjected to racial, ethnic, gender prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Minority groups are Women, African Americans not of Hispanic Origin, American Indians, Alaskan Natives, Hispanics, Asian and Pacific Islanders.

Minority Association of Cooperatives—An association of cooperatives whose primary focus is to provide assistance to small, minority agricultural producers and where the governing board and/or membership is comprised of at least 75 percent minority.

Minority Cooperative—A farmer- or rancher-owned and -controlled business, organized and chartered as a cooperative, from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners whose primary focus is to provide assistance to small, minority agricultural producers and where the governing board and/or membership is comprised of at least 75 percent minority.

Operating Cost—The day-to-day expenses of running a business; for example: utilities, rent, salaries, depreciation, product production costs, marketing and advertising, and other basic overhead items.

Project—Includes all activities to be funded by the Small Minority Agricultural Producer Grant and any matching funds.

Small, Minority Agricultural Producer—Minority persons or 100 percent minority-owned entities, including farmers, ranchers, loggers, agricultural harvesters, and fishermen, with gross annual sales of not more than $250,000 that engage in the production or harvesting of an agricultural commodity.

Rural and Rural Area—Includes all the territory of a State that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within USDA consisting of the Office of Under Secretary for Rural Development, Rural Development Business and Cooperative Programs, Rural Development Housing Programs, and Rural Development Utilities Programs and their successors.

State—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

Technical Assistance—An advisory service performed for the benefit of a small, minority agricultural producer such as market research; product and/or service improvement; legal advice and assistance; feasibility study, business plan, and marketing plan development; and training. Technical assistance does not include the operating costs of a cooperative being assisted.

II. Award Information

Type of Award: Grant

Fiscal Year Funds: FY 2007

Approximate Total Funding: $1.1 million

Approximate Number of Awards: 6

Approximate Average Award: $175,000
Floor of Award Range: None
Ceiling of Award Range: $175,000
Anticipated Award Date: September 14, 2007
Budget Period Length: 12 months
Project Period Length: 12 months

III. Eligibility Information

A. Eligible Applicants

Applicants must be a minority cooperative or a minority association of cooperatives.

B. Cost Sharing or Matching

No matching funds are required.

C. Other Eligibility Requirements

Use of Funds: The funds may only be used for technical assistance projects.

Project Area Eligibility: The Project proposed must take place in a rural area.

Grant Period Eligibility: If awarded, funds must be expended in 1 year. Applications must have a time frame of no more than 365 days with the time period beginning no earlier than October 1, 2007 and ending no later than December 31, 2008. Projects must be completed within the 1-year time frame. The Agency will not approve requests to extend the grant period. Applications that request funds for a time period ending after December 31, 2008, will not be considered for funding.

Completeness Eligibility: Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

Multiple Grant Eligibility: An applicant may not submit more than one grant application in any one funding cycle.

Activity Eligibility: Applications must propose technical assistance, as defined, to benefit their members or other small minority agricultural producers who are not members or they will not be considered for funding. Applications that have ineligible costs that equal more than 10 percent of the total project costs will be determined ineligible and will not be considered for funding. An application that has ineligible costs of 10 percent or less of total project costs and is selected for funding, must remove all ineligible costs from the budget and replace them with eligible activities or the amount of the grant award will be reduced accordingly. An applicant may not submit an application that duplicates current activities or activities to be paid for by other Federally funded grant programs.

IV. Application and Submission Information

A. Address To Request Application Package

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.* Alternatively, applicants may contact their USDA Rural Development State Office at the above list. For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

Applications must be submitted on paper or electronically. An application guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.* It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov.*

Applications submitted by paper form, applicants must submit one signed original of the completed application. The application should be in the following format:

Font size: 12 point unreduced
Paper size: 8.5 by 11 inches
Printed on only one side of each page.
Held together only by rubber bands or metal or plastic clips; not bound in any other way.

The submission must include all pages of the application. It is recommended that the application be in black and white, and not color.

If the application is submitted electronically, the applicant must follow the instructions given at the Internet address: *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. The Agency will screen all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected to the extent permitted by law.

1. Form SF–424, ''Application for Federal Assistance.'' The form must be completed, signed and submitted as part of the application package.

Please note that applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. For more information, see the SMPG Web site at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm* or by contacting the applicant's USDA Rural Development State Office. In addition to the DUNS number, an applicant must provide a legal Employment Identification Number.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. Table of Contents. For ease of locating information, each application must contain a detailed Table of Contents (TOC) immediately following the SF–424B. The TOC must include page numbers for each component of the application. Pagination should begin immediately following the TOC.

5. Eligibility Discussion: A detailed discussion, not to exceed four pages, must describe how the applicant meets the following requirements.

(i) Applicant Eligibility: If the applicant is a cooperative, the application must reference the business's good standing as a cooperative in its state of incorporation. If the applicant is an association of cooperatives, the application must reference the association's good standing as a legal business structure in its state of incorporation. If the applicant is selected for a grant, they must provide their Articles of Incorporation and By-Laws along with the State's Certificate of Good Standing to verify they are incorporated as a cooperative or an association of cooperatives in the State they have applied. The applicant must describe how it meets the definition of a ''minority cooperative'' or ''minority association of cooperatives'' as defined in the Definitions section of this Notice. The applicant must apply as only one type of applicant.

(ii) Use of Funds: The applicant must provide a detailed discussion on how the proposed project activities meet the definition of technical assistance.

(iii) Project Area: The applicant must provide information on where the projects are planned to be located and that the areas meet the ''rural area'' definition.

(iv) Grant Period: The applicant must provide a time frame for the proposed project and discuss how the project will be completed within that time frame.

6. Budget/Work Plan: The applicant must describe, in detail not to exceed four pages, the purpose of the grant, what type of assistance will be provided, and the total amount of funds needed to assist for each project. The budget must also present a breakdown of estimated costs associated with each task/activity for each project. The amount of grant funds requested will be adjusted if the applicant does not have justification for all costs.

7. Evaluation Criteria: Each of the evaluation criteria referenced in this notice must be addressed, specifically and individually on separate pages, in narrative form, not to exceed a total of one page for each evaluation criteria. Failure to address the evaluation criteria by the application deadline will result in the application being determined ineligible.

C. Submission Dates and Times

Application Deadline Date: July 30, 2007.

Explanation of Deadlines: Paper applications must be postmarked and mailed, shipped, or sent overnight by the deadline date (see Section IV.F. for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. Courier applications must be delivered by the deadline date. If the Applicant's application does not meet the deadline, it will not be considered for funding. Applicants will be notified if their application did not meet the submission deadline. Applicants will also be notified by mail or by e-mail if their application is received on time.

D. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/spoc.html.* If your State has an SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your State has not established an SPOC or you do not want to submit your application, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov* if you have questions about this process.

E. Funding Restrictions

Grant funds must be used for technical assistance. No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the grant application;
5. Pay expenses not directly related to the funded project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR parts 3015 and 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Fund any direct expenses for the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
10. Fund research and development;
11. Purchase land;
12. Duplicate current services or replace or substitute support previously provided;
13. Pay costs of the project incurred prior to the date of grant approval;
14. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
15. Pay any judgment or debt owed to the United States;
16. Pay the operating costs of cooperative and/or association of cooperatives; or
17. Pay expenses for applicant employee training.

F. Other Submission Requirements

Applicants may submit their paper application for a grant to their Rural Development State Office listed under the Addresses section. Applicants may submit their application electronically at *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or hand-delivery. Each application submission must contain all required documents in one envelope, if sent by mail or express delivery service.

V. Application Scoring Criteria Review Information

A. Criteria:

All eligible and complete applications will be evaluated based upon the following criteria. Failure to address any one of the following criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. The total points possible for the criteria are 60 and the maximum number of points for each of the following sections is 15. Any application receiving less than 40 total points will not be funded.

1. *Rural Area:* Projects must be in rural areas. Points will be awarded based upon the rural area where the proposed project is located. The Agency will determine if the area meets the rural area definition by using the following Web site: *http://maps.ers.usda.gov/loanlookup/viewer.htm.*

(i) If the proposed project is located in a city or town with a population of at least 15,000 and no more than 25,000 people, 5 points will be awarded;

(ii) If the proposed project is located in a city or town with a population of at least 5,000 and less than 15,000 people, 10 points will be awarded; or

(iii) If the proposed project is located in a city or town with a population of less than 5,000 people, 15 points will be awarded.

(iv) If the proposed project is located in an unincorporated area, 15 points will be awarded.

If the applicant proposes to provide assistance in multiple areas or cities, the applicant must list the areas or cities where the assistance will be provided, the population for each and the amount of assistance of each area. Points will be calculated by using the above point scale for each, with the points awarded using a weighted average of the points for the areas served. The information needed for this criterion may be obtained using the population finder tool at *http://www.census.gov/.*

2. *Per capita personal income:* Points will be awarded proportionally based upon a comparison of the per capita personal income of the county in which a proposed project is located to the state per capital personal income:

(i) If the per capita personal income level in the county where the proposed project will be located is less than 80 percent of the state per capita personal income level, 15 points will be awarded;

(ii) If the per capita personal income level in the county where the proposed project will be located is at least 80 percent and less than 90 percent of the state per capita personal income level, 10 points will be awarded;

(iii) If the per capita personal income level in the county where the proposed project will be located is at least 90 percent and less than 100 percent of the state per capita personal income level, 5 points will be awarded; or

(iv) If the per capita personal income level in the county where the proposed project will be located is equal to or exceeds the state per capita personal income, no points will be awarded.

If the applicant proposes to provide assistance in multiple rural counties, the applicant must list the counties where the assistance will be provided; the percentage of assistance intended to be spent in each county, and the per capita personal income level for each county. Points will be calculated by using the above point score for each county's per capital personal income level, with the total points awarded in proportion to where the assistance is directed. (For example, if 50% of the grant money will be spent in a county where the per capita income is below 80 percent, and 50% will be spent in a county where the per capita income is between 90 and 100 percent, points will be calculated as follows: [(.5)*(15) + (.5)*(5) = 10 points]. The information needed for this criterion may be obtained at *http://www.bea.gov.*

3. *Experience.* Points will be awarded based upon the relevant experience of the staff or the consultants hired to provide the proposed technical assistance.

(i) If the staff or consultants have no experience in providing technical assistance, 0 points will be awarded;

(ii) If each of the staff or consultants has 3 years of experience in providing technical assistance, 5 points will be awarded;

(iii) If each of the staff or consultants have at least 3 years of experience in providing the same type of technical assistance as proposed in the project, 10 points will be awarded; or

(iv) If each of the staff or consultants has at least 3 years of experience in providing the same type of technical assistance as proposed in the project to small, minority agricultural producers, 15 points will be awarded.

Applicants must describe the specific type of technical assistance that each staff member or consultant has experience in providing. Resumes of each individual staff member or consultant must be included as an attachment listing their experience for the type of technical assistance, along with a list of small, minority agricultural producers they've assisted. The attachments will not count toward the maximum page total. The Agency will compare the described assistance and the resumes to the work plan to determine point total.

4. Number of small, minority agricultural producers assisted. Points will be awarded based upon the number of agricultural, minority producers being assisted.

(i) If the proposed project will benefit 1–10 producers, 5 points will be awarded;

(ii) If the proposed project will benefit 11–50 producers, 10 points will be awarded; or

(iii) If the proposed project will benefit more than 50 producers, 15 points will be awarded.

Applicants must list the number of small, minority agricultural producers that will directly benefit from the assistance provided.

B. Review and Selection Process

The Agency will screen all proposals to determine whether the application is eligible and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Applications will be tentatively scored by the State Offices and submitted to the National Office for review and selection. The National Office will review the scores based upon the point allocation specified in this notice. The applications will be funded in scoring rank order and will be submitted to the Administrator in rank order, together with funding level recommendations.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 14, 2007.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and subparts A and F of part 4284 are applicable to grants made under this notice. These regulations may be obtained at *http://www.access.gpo.gov/nara/cfr/page1.*

The following additional requirements apply to grantees selected for this program:

- Agency approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''
- Form RD 400–4, ''Assurance Agreement.''
- Form 2006–38, ''Civil Rights Impact Analysis.'' Prior to approval of all grants, a Civil Rights Impact Analysis will be conducted.

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/smpg/smpg.htm.*

Fund Disbursement: The Agency will determine, based on 7 CFR 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. As needed, but not more frequently than once every 30 days, an original of SF–270, ''Request for Advance or Reimbursement,'' may be submitted to Rural Development. Recipient's request for advance shall not be made in excess of reasonable outlays for the month covered.

Reporting Requirements: Grantees must provide Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant. Grantees will need to submit:

1. Form SF–269 or SF–269A. A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semiannual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semiannual performance reports that compare accomplishments to the

objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the Project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds must be discussed. Reports are due as provided in paragraph (1) of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided.

3. Final project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds must be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided. The final performance report is due within 90 days of the completion of the project. The report must also include a summary at the end of the report with the number of small minority agricultural producers assisted to assist in documenting the annual performance goals of the SMPG program for Congress.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the appropriate State Office as indicated in the Addresses section of this notice.

VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, martial status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: May 22, 2007.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–10301 Filed 5–29–07; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Alabama Advisory Committee to the Commission will convene by conference call at 9 a.m. and adjourn at 11 a.m., on Monday, June 11, 2007. The purpose of the meeting is to conduct program planning for future briefing meeting.

This meeting is available to the public through the following toll-free call-in number (866) 364–7584, access code 8903253. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number (866) 364–7584.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office at (913) 551–1400, TTY (913) 551–1414, by Thursday, June 7, 2007.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Friday, June 29, 2007. The address is 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Farella E. Robinson at the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, May 22, 2007.

Ivy L. Davis,

Acting Director, Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–10287 Filed 5–29–07; 8:45 am]

BILLING CODE 6335–01–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: U.S. Census Bureau.

Title: U.S. Census Age Search Service.

Form Number(s): BC–600, BC–600(SP), BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Extension of a currently approved collection.

Burden: 772 hours.

Number of Respondents: 3,233.

Average Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau requests an extension of the currently approved collection for the United States Age Search Service. The age and citizenship searching service provided by the National Processing Center is a self-supporting operation of the U.S. Census Bureau. Expenses incurred in providing census transcripts are covered by the fees paid by individuals requesting a search of the census records. The Survey Processing Branch/Personal Census Search Unit in Jeffersonville, Indiana, maintains the 1910–2000 Federal censuses for searching purposes. The purpose of the searching is to provide, upon request, transcripts of personal data from

historical population census records. Information relating to age, place of birth, and citizenship is provided upon payment of the established fee to individuals for their use in qualifying for social security, old age benefits, retirement, court litigation, passports, insurance settlements, etc. The census records maintained in this unit are confidential by an Act of Congress. The Census Bureau is prohibited by federal laws from disclosing any information contained in the records except upon written request from the person to whom the information pertains or to a legal representative.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

Legal Authority: Title 13 U.S.C., Section 8a.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10329 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: 2008 New York City Housing and Vacancy Survey.

Form Number(s): H–100, H–105, H–108, H–100(L), H–100L(A).

Agency Approval Number: 0607–0757.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 10,175 hours.

Number of Respondents: 20,500.

Average Hours Per Response: 27 minutes.

Needs and Uses: The U.S. Census Bureau requests approval to conduct the 2008 New York City Housing and Vacancy Survey (NYCHVS). The Census Bureau will conduct this survey for the New York City Department of Housing Preservation and Development (NYCHPD). Pursuant to the Local Emergency Housing Rent Control Act (Chapter 8603, Laws of New York, 1963, as amended by Chapter 657, Laws of New York, 1967) and Sections 26–414 and 26–415 of the Administrative Code of the City, a survey is required in order to determine the supply, condition, and vacancy rate of housing in the city. The NYCHPD must take this survey every three years. The Census Bureau has conducted this survey for the city since 1962, most recently in 2002 under the authority of Title 13 U.S.C., section 8b.

Census Bureau interviewers will conduct personal visit interviews for a sample of housing units in the City, the vast majority of which are rental units in multi-unit rental structures (apartment buildings). Single-family rental or owner-occupied units (houses), however, are not excluded from the sample. Census will interview residents (occupied units) or other knowledgeable people such as a building manager, superintendent, or rental or real estate agent (vacant units) to gather information on vacancy rates, housing costs, and the income of residents. About ten percent of the sample will be reinterviewed for quality control purposes. Census will also determine primarily by observation whether a separate sample of units previously lost from the City's housing inventory have been reconverted for residential use.

The 2008 NYCHVS will be an up-to-date and comprehensive data source required by rent control laws as well as a source of data needed to evaluate the city's housing policies. Specifically, the city will look to the 2008 survey to provide accurate and reliable estimates of the rental and homeowner vacancy rates, to measure improvements in housing and neighborhood conditions, and to provide data on low-income, doubled-up, and crowded households at risk of becoming homeless. The city will use the results to develop programs and policies that aim to improve housing conditions.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: Every three years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8b.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10333 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: The American Community Survey.

Form Number(s): ACS–1, ACS–1(SP), ACS–1PR, ACS–1PR(SP),ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CATI (HU), ACS CAPI (HU), ACS Reinterview (HU), GQ Reinterivew.

Agency Approval Number: 0607–0810.

Type of Request: Revision of a currently approved collection.

Burden: 1,994,500 hours.

Number of Respondents: 3,220,000.

Average Hours Per Response: 37 minutes.

Needs and Uses: The Census Bureau has developed a methodology to collect and update every year demographic, social, economic, and housing data that are essentially the same as the ''long-form'' data that the Census Bureau traditionally has collected once a decade as part of the decennial census. Federal and state government agencies use such data to evaluate and manage federal programs and to distribute

funding for various programs that include food stamp benefits, transportation dollars, and housing grants. State, county, and community governments, nonprofit organizations, businesses, and the general public use information like housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decision-making and program evaluation.

In years past, the Census Bureau collected the long-form data only once every ten years, which become out of date over the course of the decade. To provide more timely data, the Census Bureau developed an alternative called the American Community Survey (ACS). The ACS blends the strength of small area estimation with the high quality of current surveys. There is an increasing need for current data describing lower geographic detail. The ACS is now the only source of data available for small-area levels across the Nation and in Puerto Rico. In addition, there is an increased interest in obtaining data for small subpopulations such as groups within the Hispanic, Asian, and American Indian populations, the elderly, and children. The ACS provides current data throughout the decade for small areas and small subpopulations.

In its reengineering efforts for Census 2010, the Census Bureau is working to achieve a simplified census based on addressing the needs of different population groups, creating an integrated system for data capture, processing, and tabulation, and conducting early testing and evaluation to achieve operational efficiencies. Decennial census data collection efforts will now be spread throughout the decade. The operations, and the systems and technologies that support them, will be revised and improved to support a continuous data collection program.

Currently, the Census Bureau is implementing an alternative census design. The design retains a short form to conduct a census count and collect a few basic characteristics and removes the long form from the decennial census, opting instead to replace the once-a-decade long-form survey with a continuous annual survey, the American Community Survey. Given the escalating complexity of collecting data, the separation of long-form data collection from the 2010 Census is critical. The American Community Survey achieves this goal.

The American Community Survey provides more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decision-makers, as well as private business and nongovernmental organizations, need current, reliable, and comparable socioeconomic data to chart the future.

The ACS began providing up-to-date profiles in 2006 for areas and population groups of 65,000 or more people, providing policymakers, planners, and service providers in the public and private sectors with information every year-not just every ten years. The ACS program will provide estimates annually for all states and for all medium and large cities, counties, and metropolitan areas. For smaller areas and population groups, it will take three to five years to accumulate information to provide accurate estimates. After that period of time, the multiyear average estimates will be updated annually.

Using the Master Address File (MAF) from the decennial census that is updated each year, Census will select a sample of addresses, mail survey forms each month to a new group of potential households, and attempt to conduct interviews over the telephone with households that have not responded. Upon completion of the telephone follow-up, Census will select a sub-sample of the remaining households, which have not responded, typically at a rate of one in three, to designate a household for a personal interview. Census will also conduct interviews with a sample of residents at a sample of group quarters (GQ) facilities. Collecting these data from a new sample of HU and GQ facilities every month will not only provide more timely data but will lessen respondent burden in the decennial census.

We will release a yearly microdata file, similar to the Public Use Microdata Sample file of the Census 2000 long-form records. In addition, we will produce total population summary tabulations similar to the Census 2000 tabulations down to the block group level. The microdata files, tabulated files, and their associated documentation are available through the Internet.

For the 2008 ACS, we will use modified data collection materials based upon results of the 2006 ACS Content Test. The content of the 2008 American Community Survey questionnaire and data collection instruments for both residential and group quarters operations reflect 2006 tested changes to content, instructions, and forms design. These survey instruments will also include changes based on wording, format and instructions of the 2010 Census form for gender, age, relationship, race, Hispanic origin, and tenure.

The 2006 ACS Content Test resulted in a Census Bureau recommendation to OMB to modify twelve (seven housing and five population) question series on the ACS. The modified housing questions are: Year Structure Built, Value of Property, Number of Rooms, Number of Bedrooms, Kitchen Facilities, Plumbing Facilities, and Telephone Service Availability, and Food Stamp Benefit. The modified population questions are: School Enrollment, Educational Attainment, Residence 1 Year Ago, Disability, and Labor Force Status.

Two ACS questions, veteran years of military service and seasonal residence, will no longer be included in the ACS. The Veterans Administration has determined that these data are no longer needed annually at small geographic areas. The seasonal residence question was included in the ACS for the Census Bureau to evaluate seasonality effects. We now have enough data and do not need to continue this data collection.

The Census Bureau proposes including three new subjects on the ACS: Health insurance coverage, marital history, and veteran's service-connected disability ratings.

Census is beginning the once-a-decade process of confirming the statutory basis of each question on the ACS. Census will be seeking documentation and confirmation from other Federal agencies to ensure that every ACS question is fully justified and that data are needed annually at small geographic areas. This documentation will be submitted to Congress by March 31, 2008, as required by statute, and to OMB and the public as well.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Farms.

Frequency: Monthly. Respondents are required to provide a response only once.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141, 193, and 221.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail *(bharrisk@omb.eop.gov).*

Dated: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10335 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–07–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 of 1995, Public Law 104–13.

Bureau: International Trade Administration (ITA).

Title: Advocacy Comment Card.

Agency Form Number: None.

OMB Number: 0625–0251.

Type of Request: Regular submission.

Burden: 54 hours.

Number of Respondents: 650.

Average Hours Per Response: 5 minutes.

Needs and Uses: 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 USCS uses ''Comment Cards'' to collect feedback from the U.S. business clients it serves. The surveys request the client to evaluate the USCS 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 USCS. In providing these services, the USCS advocates on behalf of a U.S. company that is bidding on a project or government contract, attempting to recover payment or goods, or facing a barrier to market entry.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection 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 this publication to David Rostker, OMB Desk Officer, via the Internet *David_Rostker@omb.eop.gov* or Fax (202) 395–7285.

Dated: May 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10406 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Industrial Research and Development

ACTION: Proposed information 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 July 30, 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) and instructions should be directed to Julius Smith, Jr., Census Bureau, Room 7K145, Washington, DC 20233–6900, 301–763–4683 (or via the Internet at *julius.smith.jr@census.gov*) and Raymond M. Wolfe, National Science Foundation, 4201 Wilson Boulevard, Suite 965, Arlington, VA 22230, 703–292–7789 (or via the Internet at *rwolfe@nsf.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to extend the current OMB clearance for the Survey of Industrial Research and Development (R&D). The survey has been conducted annually since 1953. The information collection involves the estimation of the expenditures on research and development performed within the United States by industrial firms.

Industry accounts for over 70 percent of total U.S. R&D each year and since its inception, the survey has provided continuity of statistics on R&D expenditures by major industry groups and by source of funds. The survey is the industrial component of the National Science Foundation (NSF) statistical program that seeks ''* * * to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal government, as mandated in the National Science Foundation Act of 1950.'' Statistics from the survey will be released by the Census Bureau and published in NSF's annual publication series Research and Development in Industry. The proposed collection will continue the survey for three years.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data and will also offer an electronic version of the form via the Internet. Companies will be asked to respond within 30 days (RD–1A) or 60 days (RD–1) of initial mailing. This due date will be imprinted at the top of the form. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0912.

Form Number: RD–1 (long form); RD–1A (abbreviated form).

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: RD–1, 3,600; and RD–1A, 28,500.

Estimated Time Per Response: RD–1—8 hours; RD–1A—1 hour.

Estimated Total Annual Burden Hours: 57,300.

Estimated Total Annual Cost: $1,056,039.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

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: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10330 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Local Update of Census Addresses (LUCA) Program

ACTION: Proposed information 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 July 30, 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) and instructions should be directed to Robert A. LaMacchia, Chief, Geography Division, U.S. Census Bureau, Washington, DC 20233–7400; telephone (301) 763–2131; fax (301) 763–4710; or by e-mail at *robert.a.lamacchia@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Local Update of Census Addresses (LUCA) Program was developed by the U.S. Census Bureau to meet the requirements of the Census Address List Improvement Act of 1994, Public Law 103–430. The Census Bureau will use the LUCA program to help develop the housing unit and group quarters (e.g., college dormitory, nursing home, correctional facility, etc.) address information that it will need to conduct the 2010 Decennial Census. Under the voluntary LUCA Program, participating governments may review the Census Bureau's confidential list of individual living quarters addresses and provide to the Census Bureau address additions, corrections, deletions, and/or the identification of corrected address counts for census blocks; street and street attribute updates; and legal boundary updates. Governments electing to participate in the LUCA program also provide program contact information, certification of their agreement to maintain the confidentiality of the Census Bureau address information, responses regarding their physical and information technology security capabilities, program option and product media preference information, shipment inventory information, and certification of their return/destruction of materials containing confidential data. The program will be available to tribal, state, and local governments, and the District of Columbia and Puerto Rico (or their designated representatives) in areas for which the Census Bureau performs a precensus address canvassing operation (excluded are sparsely settled areas in the states of Alaska and Maine). The LUCA program includes federally recognized American Indian tribes with reservations and/or off-reservation trust lands, states, and general-purpose local governments, such as cities and townships, for which the Census Bureau reports data. This information collection will occur between August 2007 and April 2008.

II. Method of Collection

The information on address additions, corrections, deletions, and/or the identification of corrected address counts for census blocks is collected, at the participating government's option, in the form of:

a. Handwritten annotations to printed address listings (for governments with 6,000 or fewer addresses); or

b. Electronic data files formatted to Census Bureau specifications; or

c. Electronic data files output by the MAF/TIGER Partnership Software, a desktop computer application supplied free-of-charge to LUCA Program participants that permits the review and update of Census Bureau address and map information.

The information on street and street attribute updates as well as legal boundary updates is collected, at the participating government's option, in the form of:

a. Handwritten annotations on Census Bureau-supplied paper maps; or

b. Electronic updates to Census Bureau-supplied digital shape files; or

c. Shape files output by the MAF/TIGER Partnership Software, a desktop computer application supplied free-of-charge to LUCA Program participants that permits the review and update of Census Bureau address and map information.

The information on the program contacts, certification of agreement to maintain the confidentiality of the Census Bureau address information, physical and information technology security capabilities, program option and product media preferences, shipment inventory, and certification of the return/destruction of materials containing confidential data is collected via the completion of printed paper forms.

III. Data

OMB Number: 0607–0795.

Form Numbers:

D–1668—Registration Form—English

D–1668(PR)(S)—Registration Form—Spanish

D–1669—Confidentiality Agreement Form—English

D–1669(PR)(S)—Confidentiality Agreement Form—Spanish

D–1670—Participation Option/Product Preference Form

D–1670(LTW)—Product Preference Form—Mailed to entities wholly within a federally-recognized American Indian reservation and/or trust land

D–1670(SG)—Participation Option/GIS Preference/County Selection Form—mailed to governors only (state level form)

D–1670(PR)(S)—Participation Option/Product Preference Form—Spanish

D–1670(SG)(PR)(S)—Participation Option/GIS Preference/County Selection Form—mailed to governors only (state level form)

D–1671—Inventory Form—English

D–1671(PR)(S)—Inventory Form—Spanish

D–1674—Return/Destruction Form—English

D–1674(PR)(S)—Return/Destruction Form—Spanish

D–1676—Self-Assessment Checklist—English

D–1676(PR)(S)—Self-Assessment Checklist—Spanish

D–1690(LG)—Address List—local government

D–1690(TG)—Address List—tribal government

D–1690(PR)(S)—Address List—Puerto Rico (Spanish)

D–1691(LG)—Address List Add Page—local government

D–1691(TG)—Address List Add Page—tribal government

D–1691(PR)(S)—Address List Add Page—Puerto Rico (Spanish)

D–1692(LG)—Address Count List—local government

D–1692(TG)—Address Count List—tribal government

D–1692(PR)(S)—Address Count List—Puerto Rico (Spanish)

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: Tribal, state, and local governments.

Estimated Number of Respondents: 19,780 governments.

Estimated Time Per Response: 196 hours on average; will vary by population size of government.

Estimated Total Annual Burden Hours: 3,909,829.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Chapter 1, Subchapter 1, Section 16.

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: May 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10361 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Voluntary Self-Disclosure of Antiboycott Violations

ACTION: Proposed information 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 July 30, 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) and instructions should be directed to Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports enforcement of the antiboycott provisions for the Export Administration Regulations (EAR) by providing a method for industry to voluntarily self-disclose antiboycott violations.

II. Method of Collection

Paper form.

III. Data

OMB Number: 0694–0132.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 10 to 600 hours per response.

Estimated Total Annual Burden Hours: 1,280.

Estimated Total Annual Cost: No start-up capital expenditures.

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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 23, 2007

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10328 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–16]

In the Matter of: Rufina Sanchez Lopez, Principal; Winter Aircraft Products SA; a/k/a Ruf S. Lopez SA; C/Ferrocarril 41; 1 DCHA; 28045 Madrid Spain; Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order of the Administrative Law Judge (''ALJ'').

In a charging letter filed on September 12, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, Rufina Sanchez Lopez, (''Sanchez Lopez''), in her capacity as Principal of Winter Aircraft Products SA (''Winter Aircraft''), committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774) (2007)) (''Regulations'') [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000)). The 2007 Regulations establish the procedures that apply to this matter.

(2000)) (the ''Act'').[2] Specifically, the charging letter alleged that between on or about November 1, 2000, and on or about November 17, 2000, Sanchez Lopez took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Sanchez Lopez, acting through her company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts to Iran. In taking these actions, Sanchez Lopez committed one violation of Section 764.2(h) of the Regulations.

The charging letter further alleged that between on or about October 19, 2000, and on or about November 22, 2000, Sanchez Lopez took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Sanchez Lopez, acting through her company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations to Iran. In taking these actions, Sanchez Lopez committed one violation of Section 764.2(h) of the Regulations.

On September 12, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Sanchez Lopez at her last known address, in accordance with Section 766.3(b)(1) of the Regulations. The notice of issuance of a charging letter was received by Sanchez Lopez on or about September 21, 2005. To date, Sanchez Lopez has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on March 20, 2007. This Motion for Default Order recommended that Sanchez Lopez be denied export privileges under the Regulations for a period often years. Under Section 766.7(a) of the Regulations, ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.'' Based upon the record before him, the ALJ found Sanchez Lopez in default.

On May 1, 2007, the ALJ issued a Recommended Decision and Order in which he found that Sanchez Lopez committed two violations of Section 764.2(h). The ALJ recommended the penalty of denial of export privileges for ten years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

Accordingly it is therefore ordered,

First, that for a period of ten years from the date of this Order, Rufina Sanchez Lopez, Principal, Winter Aircraft Products SA, a/k/a Ruf S. Lopez SA, C/Ferrocarril 41, 28045 Madrid, Spain, and when acting for or on behalf of Sanchez Lopez, her representatives, agents and employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership,

[2] From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 24, 2007.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On September 12, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), issued a charging letter initiating this administrative enforcement proceeding against Rufina Sanchez Lopez, (''Sanchez Lopez''), in her capacity as Principal of Winter Aircraft Products SA (''Winter Aircraft''). The charging letter alleged that Sanchez Lopez committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2006)) (the ''Regulations''),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000) (the ''Act'').[2] In accordance with § 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against Sanchez Lopez as Sanchez Lopez has failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by law.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

> Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend and order imposing appropriate sanctions.

15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to Sanchez Lopez at her last known address on September 12, 2005. Although, BIS did not receive the signed registered mail receipt, BIS did receive a letter from Winter Aircraft, the company in which Sanchez Lopez is Principal, acknowledging receipt of the charging letter on September 21, 2005. Further, BIS and Winter Aircraft have engaged in several months of correspondence regarding the matter. BIS counsel has advised Sanchez Lopez, through her company Winter Aircraft, repeatedly to file an answer to the charging letter with the Administrative Law Judge (''ALJ''). Sanchez Lopez has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. Accordingly, Sanchez Lopez is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included a total of two charges. Specifically, the charging letter alleged the following:

Charge 1 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about November 1, 2000, and on or about November 17, 2000, Sanchez Lopez, took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Sanchez Lopez, acting through her company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Sanchez Lopez committed one violation of Section 764.2(h) of the Regulations.

Charge 2 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about October 19, 2000, and on or about November 22, 2000, Sanchez Lopez took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Sanchez Lopez, acting through her company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items, and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Sanchez Lopez committed one violation of Section 764.2(h) of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, the undersigned refers this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2000)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, 3 CFR, 2000 Comp. 397 (2001), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (2000) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 CFR, 2001 Comp. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Regulations in effect under the IEEPA.

Dated: May 1, 2007.

Joseph N. Ingolia,

Chief Administrative Law Judge.

[FR Doc. 07–2675 Filed 5–25–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–17]

In the Matter of: Jose Alberto Diaz Sanchez, President, Winter Aircraft Products SA, a/k/a Ruf S. Lopez SA; C/ Ferrocarril 41; 1 DCHA 28045 Madrid, Spain, Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order of the Administrative Law Judge (''ALJ'').

In a charging letter filed on September 12, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, Jose Alberto Diaz Sanchez, (''Diaz Sanchez''), in his capacity as President of Winter Aircraft Products SA (''Winter Aircraft''), committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774) (2007)) (''Regulations'') [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (the ''Act'').[2] Specifically, the charging letter alleged that between on or about November 1, 2000, and on or about November 17, 2000, Diaz Sanchez took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Diaz Sanchez, acting through his company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations to Iran. In taking these actions, Diaz Sanchez committed one violation of Section 764.2(h) of the Regulations.

The charging letter further alleged that between on or about October 19, 2000, and on or about November 22, 2000, Diaz Sanchez took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Diaz Sanchez, acting through his company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts to Iran. In taking these actions, Diaz Sanchez committed one violation of Section 764.2(h) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on September 12,2005, BIS mailed the notice of issuance of the charging letter by registered mail to Diaz Sanchez at his last known address. The notice of issuance of a charging letter was received by Diaz Sanchez on or about September 21, 2005. The record establishes that BIS and Diaz Sanchez engaged in several months of correspondence regarding the matter, and BIS counsel advised Diaz Sanchez to file an answer to the charging letter. To date, Diaz Sanchez has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on March 20, 2007. This Motion for Default Order recommended that Diaz Sanchez be denied export privileges for a period of ten years. Under Section 766.7(a) of the Regulations, ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.'' Based upon the record before him, the ALJ found Diaz Sanchez in default.

On May 1, 2007, the ALJ issued a Recommended Decision and Order in which he found that Diaz Sanchez committed two violations of § 764.2(h). The ALJ also recommended the penalty of denial of export privileges for ten years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that for a period of ten years from the date of this Order, Jose Alberto Diaz Sanchez, President, Winter Aircraft Products SA, a/k/a Ruf S. Lopez SA, C/ Ferrocarril 41, 28045 Madrid, Spain, and when acting for or on behalf of Diaz Sanchez, his representatives, agents and employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000)). The 2007 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALl's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 24, 2007.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On September 12, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Jose Alberto Diaz Sanchez, (''Diaz Sanchez''), in his capacity as President of Winter Aircraft Products SA (''Winter Aircraft''). The charging letter alleged that Diaz Sanchez committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2006)) (the ''Regulations'') [1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act'').[2] In accordance with § 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against Diaz Sanchez as Diaz Sanchez has failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by law.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

> Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to Diaz Sanchez at his last known address on September 12, 2005. BIS has submitted evidence that establishes that this charging letter was received by Diaz Sanchez on or about September 21, 2005. In addition, BIS also received a letter from Winter Aircraft, the company of which Diaz Sanchez is President, acknowledging receipt of the charging letter on September 21, 2005. Further, BIS and Winter Aircraft have engaged in several months of correspondence regarding the matter. BIS counsel has advised Diaz Sanchez, through his company Winter Aircraft, repeatedly to file an answer to the charging letter with the Administrative Law Judge (''ALJ''). Diaz Sanchez has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. Accordingly, Diaz Sanchez is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included a total of two charges. Specifically, the charging letter alleged the following:

Charge 1 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about November 1, 2000, and on or about November 17, 2000, Diaz Sanchez took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Diaz Sanchez, acting through his company Winter Aircraff, acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Diaz Sanchez committed one violation of Section 764.2(h) of the Regulations.

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2000)). The 2006 Regulations establish the Procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, 3 CFR, 2000 Comp. 397 (2001), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701—1706 (2000) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 CFR, 2001 Comp. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Regulations in effect under IEEPA.

Charge 2 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about October 19, 2000, and on or about November 22, 2000, Diaz Sanchez took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Diaz Sanchez, acting through his company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Diaz Sanchez committed one violation of Section 764.2(h) of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: May 1, 2007.

The Honorable Joseph N. Ingolia,
Chief Administrative Law Judge.

[FR Doc. 07–2677 Filed 5–29–07; 8:45 a.m.]
BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–15]

In the Matter of: Winter Aircraft Products SA; a/k/a Ruf S. Lopez SA, C/Ferrocarril 41, 1 DCHA, 28045 Madrid, Spain; Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order of the Administrative Law Judge (''ALJ'').

In a charging letter filed on September 12, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, Winter Aircraft Products SA (hereinafter ''Winter Aircraft''), also known as Ruf S. Lopez SA., committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774) (2007)) (''Regulations'') [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act'').[2] Specifically, the charging letter alleged that between on or about November 1,2000, and on or about November 17, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations to Iran. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

The charging letter further alleged that between on or about October 19, 2000, and on or about November 22, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations to Iran. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on September 12, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Winter Aircraft at its last known address. The notice of issuance of a charging letter was received by Winter Aircraft on or about September 21, 2005. The file establishes that BIS and Winter Aircraft engaged in several months of correspondence regarding the matter, and that BIS counsel advised Winter Aircraft to file an answer to the charging letter. To date, however, Winter Aircraft has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on March 20, 2007. This Motion for Default Order recommended that Winter Aircraft be denied export privileges under the Regulations for a period of ten years. Under Section 766.7(a) of the Regulations, ''[fJailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.'' Based upon the record before him, the ALJ found Winter Aircraft in default.

On May 1, 2007, ALJ issued a Recommended Decision and Order in which he found that Winter Aircraft committed two violations of Section 764.2(h). The ALJ also recommended the penalty of denial of Winter Aircraft's export privileges for ten years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that for a period of ten years from the date of this Order, Winter Aircraft Product SA, a/k/a Ruf S. Lopez SA, C/Ferrocarril 41, 28045 Madrid, Spain, its successors and assigns, and when acting for or on behalf of Winter Aircraft, its representatives, agents and

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000)). The 2007 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701—1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 24, 2007.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On September 12, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Winter Aircraft Products SA (''Winter Aircraft''), also known as Ruf S. Lopez SA. The charging letter alleged that Winter Aircraft committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2006)) (the ''Regulations''),[1] Issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act'').[2] In accordance with § 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against Winter Aircraft as Winter Aircraft has failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by law.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

> Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.
> 15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to Winter Aircraft at its last known address on September 12, 2005. BIS has submitted evidence that establishes that this charging letter was received by Winter Aircraft on or about September 21, 2005. In addition, BIS also received a letter from Winter Aircraft acknowledging receipt of the charging letter on September 21, 2005. Further, BIS and Winter Aircraft have engaged in several months of correspondence regarding the matter. BIS counsel has advised Winter Aircraft repeatedly to file an answer to the charging letter with the Administrative Law Judge (''ALJ''). Winter Aircraft has failed to file an answer to the charging letter as required by section 766.6 of the Regulations.

[1] The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000, 3 CFR, 2000 Comp. 397 (2001), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (2000) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 CFR, 2001 Compo 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Regulations in effect under the IEEPA.

Accordingly, Winter Aircraft is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included a total of two charges. Specifically, the charging letter alleged the following:

Charge 1 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about November 1, 2000, and on or about November 17, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

Charge 2 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about October 19, 2000, and on or about November 22, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Done and Dated May 1, 2007, Baltimore, Maryland.

The Honorable Joseph N. Ingolia,

Chief Administrative Law Judge.

[FR Doc. 07–2676 Filed 5–25–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Duty-Free Entry of Scientific Instrument or Apparatus

ACTION: Proposed information collection; 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 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 July 30, 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 or via internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230; phone number (202) 482–1660, fax number (202) 482–0949 or via the Internet at *Faye_Robinson@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Departments of Commerce and Homeland Security (''DHS'') are required to determine whether nonprofit institutions established for scientific or educational purposes are entitled to duty-free entry for scientific instruments the institutions import under the Florence Agreement. Form ITA–338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, DHS and Commerce would not have the necessary information to carry out the responsibilities of determining eligibility for duty-free entry assigned by law.

II. Method of Collection

A copy of Form ITA–338P is provided on and downloadable from a Web site at *http://ia.ita.doc.gov/sips/sipsfap* or the potential applicant may request a copy from the Department. The applicant completes the form and then forwards it via mail to DHS.

Upon acceptance by DHS as a valid application, the application is transmitted to Commerce for further processing.

III. Data

OMB Number: 0625–0037.

Form Number: ITA–338P.

Type of Review: Regular submission.

Affected Public: State or local government; Federal agencies; not for-profit institutions.

Estimated Number of Respondents: 65.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 130.

Estimated Total Annual Costs: $2,860.

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 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: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10340 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Certain Steel Concrete Reinforcing Bars from Turkey with respect to four exporters.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2008.

Antidumping Duty Proceedings	Period to be Reviewed
RUSSIA: Magnesium Metal.	
A–821–819	4/1/06 - 3/31/07
PSC VSMPO–AVISMA Corporation.	
Solikamsk Magnesium Works.	
THE PEOPLE'S REPUBLIC OF CHINA: Automotive Replacement Glass Windshields[1].	
A–570–867	4/1/06 - 3/31/07
Shenzhen CSG Automotive Glass Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Brake Rotors[2].	
A–570–846	4/1/06 - 3/31/07
National Automotive Industry Import & Export Corporation or China National. Automotive Industry Import & Export Corporation, and manufactured by any company other than Shandong Laizhou Capco Industry ("Laizhou CAPCO").	
Laizhou CAPCO, and manufactured by any company other than Laizhou CAPCO.	
Laizhou Luyuan Automobile Fittings Co., and manufactured by any company other than Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd..	
Shenyang Honbase Machinery Co., Ltd., and manufactured by any company other than Laizhou Luyuan Automobile Fittings Co., or Shenayang Honbase Machinery Co., Ltd..	
China National Industrial Machinery Import & Export Corp..	
Laizhou Auto Brake Equipment Co., Ltd..	
Longkou Haimeng Machinery Co., Ltd..	
Qingdao Gren Co., aka Qingdao Gren (Group) Co..	
Yantai Winhere Auto–Part Manufacturing Co., Ltd..	
Zibo Luzhou Automobile Parts Co., Ltd..	
Laizhou Hongda Auto Replacement Parts Co., Ltd..	
Qingdao Meita Automotive Industry Co., Ltd..	
Longkou TLC Machinery Co., Ltd..	
Zibo Golden Harvest Machinery Limited Company.	
Xianghe Xumingyuan Auto Parts Co..	
Laizhou City Luqi Machinery Co., Ltd., aka Laizhou Luqi Machinery Co., Ltd..	
Shenyang Yinghao Machinery Co., aka Shenyang Yinghao Machinery Co., Ltd..	
Longkou Jinzheng Machinery Co., Ltd..	
Dixion Brake System (Longkou) Ltd..	
Laizhou Wally Automobile Co., Ltd..	
Shanxi Zhongding Auto Parts Co., Ltd..	
Shangdong Huanri Group Company, successor–in-interest to Shangdong. Huanri (Group) General Company.	
Qingdao Golrich Autoparts Co., aka Qingdao Golrich Autoparts Co., Ltd..	
Longkou Qizheng Auto Parts Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Bars and Wedges[3].	
A–570–803	2/1/06 - 1/31/07
Truper Herramientas S.A. de C.V..	
THE PEOPLE'S REPUBLIC OF CHINA: Magnesium Metal[4].	
A–570–896	4/1/06 - 3/31/07
Tianjin Magnesium International Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Bedroom Furniture.	
A–570–890	1/1/06 - 12/31/06
Country Roots Furniture Inc.[5].	
TURKEY: Certain Steel Concrete Reinforcing Bars.	
A–489–807	4/1/06 - 3/31/07
Colakoglu Metalurji A.S. and Colokaglu Dis Ticaret A.S..	
Diler Demir Celik Endustri ve Ticaret A.S., Yazici Demir Celik. Sanayi ve Turizm Ticaret A.S. and Diler Dis Ticaret A.S..	
Ege Celik Endustrisi Sanayi ve Ticaret A.S./Ege Dis Ticaret A.S..	

Antidumping Duty Proceedings	Period to be Reviewed
Ekinciler Dis Ticaret A.S. and Ekinciler Demir ve Celik Sanayi A.S..	
Izmir Demir Celik Sanayi A.S..	
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S..	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.and Kaptan Metal Dis Ticaret. ve Nakliyat A.S..	
Kroman Celik Sanayii A.S..	
Nursan Celik Sanayi ve Haddecilik A.S..	
Countervailing Duty Proceeding.	
None..	
Suspension Agreements.	
None..	

[2] If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] In the initiation notice that published on March 28, 2007 (72 FR 14517), the review period for the above referenced case was incorrect. The period listed above is the correct period of review for this case.

[4] If one of the named companies does not qualify for a separate rate, all other exporters of magnesium metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] The company listed for the above referenced case was inadvertently omitted from the initiation notice that published on March 7, 2007 (72 FR 10159).

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v.United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–10369 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Certain Automotive Replacement Glass Windshields from The People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On May 10, 2007, the United States Court of International Trade (''Court'') entered a final judgment sustaining the third remand results made by the Department of Commerce (''the Department'') pursuant to the Court's remand of the antidumping duty order on Certain Automotive Replacement Glass Windshields from the People's Republic of China (''PRC'') in Slip Op. 06–21 (CIT February 15, 2006). *See Fuyao Glass Industry Group Co. v. United States*, Ct. No. 02–00282, Slip Op. 06–21 (Ct. Int'l Trade May 10, 2007) (''*Fuyao Glass*''). This case arises out of the Department's *Antidumping Duty Order on Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002) (''Order''). The final judgment in this case was not in harmony with the Department's *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) (''*Final Determination*''), and accompanying Issues and Decisions Memorandum (''*Decision Memo*''), as amended at 67 FR 11670 (March 15, 2002), covering the period of investigation (''POI''), July 1, 2000 through December 31, 2000.

EFFECTIVE DATE: May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

Plaintiffs, Fuyao Glass Industry Group Co., Ltd. (''Fuyao'') and Xinyi Automotive Glass Co., Ltd. (''Xinyi''), contested several aspects of the *Final Determination*, including the Department's decision to disregard certain market economy inputs. On February 15, 2006, the court remanded the Department's decision regarding certain market economy inputs to the Department. *See Fuyao Glass Industry Group Co., Ltd. v. United States*, Consol. Court No. 02–00282, 2006 Ct. Int'l Trade Lexis 21, Slip Op. 2006–21 (CIT February 15, 2006) (''*Fuyao Glass III*''). In its remand to the Department, the Court concluded with respect to the standard applied in the Department's analysis, that the Department must conduct its analysis ''in accordance with the court's finding with respect to the use of the word 'are' rather than 'may be' when applying its subsidized price methodology.'' *Fuyao Glass III*, Slip Op. P. 9. The Court further directed the Department to either (1) ''concur with the court's conclusions with respect to substantial evidence, or (2) re–open the record . . .'' *Fuyao Glass III*, Slip Op. p. 7. The Court concluded that it does not find the Department's determination, that prices from Korea and Indonesia are subsidized, is

supported by substantial record evidence. *See Fuyao Glass III*, Slip Op. p. 16. Pursuant to the Court's ruling, and under respectful protest, the Department concurred that the record evidence does not contain substantial evidence to support a conclusion that prices from Korea and Indonesia are subsidized. *See Viraj Group v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003). Because the Court found that the evidence on the record does not support the Department's determination to disregard prices from Korea and Indonesia, in the remand results, the Department determined to calculate the dumping margin for Fuyao and Xinyi based upon prices the plaintiffs actually paid to suppliers located in Korea and Indonesia.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (''*Timken*''), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination. The Court's decision in *Fuyao Glass III* on May 10, 2007, constitutes a final decision of that court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection if the Court's decision is not appealed or if it is affirmed on appeal.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: May 21, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10380 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Extension of Time Limit for the Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518 and (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2006, the Department of Commerce (''Department'') published a notice of initiation of four new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 63284 (October 30, 2006). On October 31, 2006, the Department published a notice of initiation of administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 63752 (October 31, 2006). On March 23, 2007, the Department aligned the time limits in the new shipper reviews with the time limits in the administrative review. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Reviews in Conjunction With Administrative Review*, 72 FR 13744 (March 23, 2007). The period of review is September 1, 2005, through August 31, 2006. The preliminary results of the administrative review and the new shipper reviews are currently due no later than June 2, 2007.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department has determined that it is not practicable to complete the instant administrative review and the new shipper reviews within the time limits mandated by section 751(a)(3)(A) of the Act because it requires additional time to analyze several complex sales reporting issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of the instant administrative review and new shipper reviews until October 1, 2007, the first business day after the fully extended due date of September 30, 2007. The deadline for the final results of these reviews continues to be 120 days after the publication of the preliminary results.

This extension notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 22, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–10365 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2007, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on stainless steel bar from Germany. On the basis of the notice of intent to participate by domestic interested parties and adequate responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'') and section 351.218(e)(2)(i) of the Department's regulations. As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Preliminary Results of Review.''

EFFECTIVE DATE: May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman or Brandon Farlander AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230;

telephone: 202–482–3534 and 202–482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2007, the Department published its notice of initiation of the sunset review of the antidumping duty order on stainless steel bar (''SSB'') from Germany, in accordance with section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 4689 (February 1, 2007).

The Department received the Notice of Intent to Participate from Carpenter Technology Corp.; North American Stainless; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic–like product in the United States.

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received a response from respondent interested parties in Germany; BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively ''BGH'' or ''the respondent interested parties''). We found this response to be adequate because BGH accounted for more than 50 percent of the exports of subject merchandise from Germany to the United States during the sunset review period (January 1, 2002 through December 31, 2006). *See* Memorandum to Susan H. Kuhbach entitled, ''Adequacy Determination in Antidumping Duty Sunset Review of Stainless Steel Bar from Germany,'' (March 23, 2007). Therefore, we are conducting a full sunset review of the antidumping duty order on SSB from Germany as provided for at section 751(c)(5)(A) of the Act, and at 19 CFR 351.218(e)(2)(i).

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Stainless Steel Bar from Germany; Preliminary Results'' (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 22, 2007, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order was revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Department Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2007.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on SSB from Germany is likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturers/Producers/Exporters	Weighted–Average Margin (Percent)
BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH	*COM041*0.73
Edelstahl Witten–Krefeld GmbH	10.82, as amended
Krupp Edelstahlprofile	31.25, as amended
All Others	15.16, as amended

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than September 29, 2007.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752,and 777(i)(1) of the Act.

Dated: May 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10367 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Electronic Education Fairs for China and India

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: U.S. accredited colleges and universities are invited to sponsor the U.S. Electronic Education Fairs for

China and India by purchasing space on the corresponding internet landing pages.

DATES: Applications will be accepted from May 31, 2007 until 3 p.m. EDT August 27, 2007. The initiative is scheduled to commence on or around September 15, 2007.

ADDRESSES:

FOR FURTHER INFORMATION CONTACT: Jennifer Moll, U.S. Department of Commerce. Tel: (248) 508 8404; Keith Roth, U.S. Department of Commerce, Room 1104. Tel: (202) 482 5012; David Long, U.S. Department of Commerce, Room 1104. Tel: (202) 482 3575.

SUPPLEMENTARY INFORMATION: The U.S. Electronic Education Fairs for China and India are part of a joint initiative between the U.S. Department of Commerce and the U.S. Department of State. The purpose of the initiative is to inform Chinese and Indian students who are interested in studying outside of their home countries about the breadth and depth of the higher education opportunities available in the United States. The initiative utilizes a three-pronged multimedia approach through the Internet, on-ground activities, and television, including two, twenty-three minute TV programs and a series of short, 1–2 minute programs airing on local cable and national satellite TV stations throughout China and India. All programming directs viewers to the corresponding Internet landing page. DVDs distributed through education trade fairs and EducationUSA advising centers throughout China and India will further this message.

Accredited U.S. educational institutions are invited to sponsor the China and India Internet landing pages. Sponsorships for China OR India will be available in Gold and Silver categories. Institutions that purchase Gold Sponsorship, priced at $8,000, will receive a banner-sized ad with their school's logo and name which will link to their institution's Web site. Institutions that purchase Silver Sponsorship, priced at $3,000, will have their name listed on the site with a link to their institution's Web site. If an institution would like to sponsor and purchase space on both the China and India Internet landing pages, they will receive a 50 percent discount for the second sponsorship, for a total of $12,000 for Gold and $4,500 for Silver.

Applications by qualifying institutions will be selected on a rolling basis, capacity permitting.

Dated: May 24, 2007.

David F. Long,

Director, Office of Service Industries.

[FR Doc. E7–10396 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate Panel Review of the Final Results of the 2nd Antidumping Duty Administrative Review made by the International Trade Administration, respecting Certain Softwood Lumber from Canada (Secretariat File No. USA–CDA–2006–1904–01).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of May 22, 2007. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 23, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–10283 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate Panel Review of the Final Results of the 2nd Countervailing Duty Administrative Review made by the International Trade Administration, respecting Certain Softwood Lumber from Canada (Secretariat File No. USA–CDA–2006–1904–02).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of May 22, 2007. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free -Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994

(59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 23, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–10284 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate Panel Review of the Final Antidumping Determination Under Section 129 of the Uruguay Round Agreements Act made by the International Trade Administration, respecting Certain Softwood Lumber from Canada (Secretariat File No. USA–CDA–2005–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of May 22, 2007. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free -Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 23, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–10285 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070516104–7104–01; I.D. 042607C]

Endangered and Threatened Species; 90–Day Finding for a Petition To List the Global Populations of Right Whales as a Single Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of 90–day petition finding.

SUMMARY: We, NMFS, announce a 90–day finding regarding a petition to list the global populations of right whales with the common name Black Whale as a single species under the Endangered Species Act of 1973, as amended (ESA). This action is required by section 4(b)(3)(A) of the ESA. After review, we find the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

DATES: This finding is effective immediately.

ADDRESSES: Copies of the petition are available upon request from the Division Chief, NMFS, Office of Protected Resources, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, telephone (301)713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2007, we received a petition from GreenWorld to list the global populations of right whales as a single species with the common name Black Whale under the ESA. Copies of this petition are available from NMFS (see **ADDRESSES**, above). GreenWorld filed the petition following two proposed rules published by NMFS on December 27, 2006, to list the North Pacific Right Whale (71 FR 77694; December 27, 2006) and the North Atlantic Right Whale (71 FR 77704; December 27, 2006) as separate endangered species.

ESA Statutory Provisions

Pursuant to section 4(b)(3)(A) of the ESA, we are required to 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. To the maximum extent practicable, this finding must be made within 90 days of receipt of the petition. Our ESA implementing regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether a petition contains substantial information indicating that the petitioned action may be warranted, we consider only information that is submitted with or referenced in the petition or readily available in our files. We do not conduct additional research. In making a finding, we consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species throughout all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Analysis of Petition

For the reasons set forth below, the petition fails to present substantial scientific and commercial information indicating that the petitioned action may be warranted.

First, the petitioner fails to identify the scientific name of the species and provides no documentation or bibliographic references supporting the assertion that the global populations of right whales should be listed as a single species. The petitioner claims there is no scientific basis for listing the northern right whale as two species and that NMFS has offered no analysis of

this listing in the **Federal Register**. However, information readily available in our files indicates that the best available science supports distinguishing the North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalaena japonica*), and southern right whale (*Eubalaena australis*) as three separate species (Rosenbaum *et al.*, 2000; Malik *et al.*, 2000; Schaeff *et al.*, 1997; Gaines *et al.*, 2005). Further, in 2000 the International Whaling Commission's Scientific Committee recommended the North Atlantic, North Pacific, and southern populations be considered separate species based on the prevailing right whale taxonomy. Lastly, in 2006 we completed a comprehensive status review of the northern right whale and concluded the northern right whale exists as two separate species, the North Atlantic right whale (*E. glacialis*) and the North Pacific right whale (*E. japonica*) (NMFS, 2006). We cited this report in the **Federal Register** in our proposed rules to list the North Pacific right whale (71 FR 77694; December 27, 2006) and North Atlantic right whale (71 FR 77704; December 27, 2006) as endangered under the ESA. A copy of the status review is also available at *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/rightwhale_northern.htm*.

Second, the petitioner provides no information regarding the past and present abundance, distribution, and threats faced by the species in support of the assertion that the global populations of right whales should be listed as a single species. Information readily available in our files regarding the past and present abundance, distribution, and threats faced by the right whales supports the listing of three separate species. Our comprehensive review of the information regarding the past and present abundance, distribution, and threats in the 2006 northern right whale review (NMFS, 2006) also supports the listing of three separate species.

Third, the petitioner provides no information regarding the status of the species throughout all or a significant portion of its range to indicate the global populations of right whales should be listed as a single species. Information readily available in our files regarding the status of right whales supports the listing of three separate species as endangered. Our comprehensive review of the information regarding the status of right whales in the 2006 northern right whale review (NMFS, 2006) also supports the listing of three separate species.

Petition Finding

Based on our review, we find the petition does not present substantial scientific or commercial information indicating the listing of the global populations of right whales as a single species may be warranted. As a result, we will not initiate a status review to determine whether the petitioned action is warranted. We will continue to fulfill our statutory obligations with regard to the conservation of all listed species of right whales, and we encourage the public to submit new information that will assist with these conservation efforts.

References Cited

A complete list of all references is available upon request from the Office of Protected Resources (see **ADDRESSES**).

Authority: The authority for this action is the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 22, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021607A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed issuance of an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from Eglin Air Force Base (Eglin AFB), for renewal of an authorization to harass marine mammals, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM). As a result of this request, NMFS is proposing to reissue a 1-year authorization to take marine mammals by Level B harassment incidental to this activity. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Eglin AFB to incidentally take, by harassment, several species of cetaceans for a period of 1 year.

DATES: Comments and information must be postmarked no later than June 29, 2007.

ADDRESSES: Comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. The mailbox address for providing email comments on this action is *PR1.021607A@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of Eglin's original 2003 application and its December, 2006 letter updating its request may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*. A copy of the Final Programmatic Environmental Assessment (Final PEA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not (where relevant) have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely

to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. For the purposes of ''military readiness activities'' harassment is defined as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Summary of Request

Eglin AFB originally petitioned NMFS on February 13, 2003, as a precautionary measure, for an authorization under section 101(a)(5) of the MMPA for the taking, by harassment, of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin's application and proposed IHA and request for 30-day public comment was published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006). A description of Eglin AFB's A-S gunnery activity follows.

Description of Activities

A-S gunnery missions, a ''military readiness activity,'' involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25–mm (0.98 in), 40–mm (1.57 in), and 105–mm (4.13 in) gunnery rounds containing, 0.0662 lb (1.1 oz 30 g), 0.865 lb (13.8 oz, 392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to ''score'' the round; the impact of inert rounds on the sea surface would not be detected. The Air Force has developed a 105–mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the ''Full-Up'' (FU) 105–mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during night-time A/S gunnery exercises when visibility at the water surface would be poor. However, the TR cannot be used in daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W–151B, W–151C, and W–151D as shown in Figure 1 in Eglin's 2003 application). Data indicate that W–151A is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

The AC–130 gunship aircraft normally transit from Hurlburt Field, FL to the water range at a minimum of 4,000 ft (1.2 km) above surface level. The AC–130 conducts at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a NMFS recommended to an operational altitude of approximately 4,500 to 10,000 ft (1372–3048 m). Ascent occurs over a 10–15 minute period. Eglin AFB has noted that the search area for these orbits ensures that no vessels (or protected species) are within an area of 5 nm (9.3 km) of the target. The AC–130 continues orbiting the selected target point as it climbs to the mission-testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew visually scan the sea surface within the aircraft's orbit circle for the presence of vessels and protected species. Primary responsibility for the surface scan is on the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors are also employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target area and repeat the clearance procedures. A typical distance from the coast for this activity is at least 15 mi (24 km).

When offshore, the crews can scan a 5–nm (9.3–km) radius around the potential impact area to ensure it is clear of surface craft, marine mammals, and sea turtles. Scanning is accomplished using radar, all-light television (TV), infrared sensors (IR), and visual means. An alternative area would be selected if any cetaceans or vessels were detected within a 5–nm (9.3 km) search area. Once the scan is completed, Mk–25 flares are dropped and the firing sequence is initiated.

A typical gunship mission lasts approximately 5 hours without refueling and 6 hours when air-to-air refueling is accomplished. A typical mission includes: (1) 30 minutes for take off and to perform airborne sensor alignment, align electro-optical sensors (IR and TV) to heads-up display; (2) 1.5 to 2 hours of dry fire (no ordnance expended), and includes transition time; (3) 1.5 to 2 hours of live fire, and includes clearing the area and transiting to and from the range (actual firing activities typically do not exceed 30 minutes); (4) 1 hour air-to-air refueling, if and when performed; and (5) 30 minutes of transition work (take-offs, approaches, and landings-pattern work).

The guns are fired during the live-fire phase of the mission. The actual firing can last from 30 minutes to 1.5 hours but is typically completed in 30 minutes. The number and type of A-S gunnery munitions deployed during a mission varies with each type of mission flown. In addition to the 25-, 40-, and 105–mm rounds, marking flares are also deployed as targets. All guns are fired at a specific target in the water, usually an Mk–25 flare, starting with the lowest caliber ordnance or action with the least impact and proceeding to greater caliber sizes. To establish the test target area, two Mk–25 flares are deployed into the center of the 5–nm (9.3–km) radius cleared area (visually clear of aircraft, ships, and surface marine species) on the water's surface. The flare's burn time normally lasts 10 to 20 minutes but could be much less if actually hit with one of the ordnance projectiles; however, some flares have burned as long as 40 minutes. Live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Firing pauses would only exceed 10 minutes if surface boat traffic or marine protected species caused the mission to relocate; if aircraft, gun, or targeting system problems existed; or if more flares needed to be deployed. The Eglin Safety Office has described the gunnery missions as having 95–percent containment with a 99–percent confidence level within a 5–m (16.4–ft) area around the established flare target test area.

Live-fire Event: 25–mm Round

The 25–mm (0.98–in) firing event in a typical mission includes approximately 500 to 1000 rounds. These rounds are first in short bursts. These bursts last approximately 2–3 seconds with approximately 100 rounds per burst. Based on the very tight target area and extremely small miss distance, these bursts of rounds all enter the

water within a 5–m (16.4–ft) area. Therefore, when calculations of the marine mammal Zone of Impact (ZOI) and take estimates are made later in this document for the 25–mm rounds, calculations will be based on the total number of rounds fired per year divided by 100.

Live-fire Event: 40–mm Round

The 40–mm (1.57 in) firing event of a typical mission includes approximately 10 seconds with approximately 20 rounds per burst. Based on the very tight target area and extremely small ''miss'' distance, these bursts of rounds all enter the water within a 5–m (16.4 ft) area. Therefore, when calculations of the marine mammal ZOI and take estimates are made later in this document for the 40–mm rounds, calculations will be based on the total number of rounds fired per year divided by 20.

Live-fire Event: 105–mm Round

The 105–mm firing event of a typical mission includes approximately 20 rounds. These rounds are not fired in bursts, but as single shots. The 105–mm firing event lasts approximately 5 minutes with approximately two rounds per minute. Due to the single firing event of the 105–mm round, the peak pressure of each single 105–mm round is measured at a given distance (90 m (295 ft)) for the 105mm TR and 216 m (709 ft) for the 105mm FU).

As described in Eglin's 2003 application, gunnery testing in this request includes historical baseline yearly amounts in addition to proposed nighttime gunnery missions. Daytime gunnery testing uses the 105–mm FU round and nighttime gunnery training is proposed using the 105–mm TR. The number of 105–mm rounds including nighttime operations would amount to 1,742. As shown in detail in Tables 1 and 2 (see 71 FR 27695, May 12, 2006), Eglin proposes to conduct a total of 28 daytime missions and 263 nighttime missions annually, expending 3,832 rounds in daytime and 30,802 rounds nighttime (242 105–mm FU and 1,500 rounds would be the 105–mm TR).

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. General information on these species can be found in Wursig et al. (2000) and in the NMFS Stock Assessment Reports (Waring et al., 2007). This latter document is available at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm201/*

Of these 29 species of marine mammals, approximately 21 may be found within the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pan-tropical spotted dolphin, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, Clymene dolphin, spinner dolphin, striped dolphin, killer whale, false killer whale, pygmy killer whales, Risso's dolphin, Fraser's dolphin, melon-headed whale, rough-toothed dolphin, and pilot whale. Supplementary information on those species that may be impacted by the A/S gunnery exercises are discussed in the Eglin application (Eglin AFB, 2003) and the Eglin's Final PEA.

Potential Impacts to Marine Mammals

A/S gunnery operations may potentially impact marine mammals at the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (Eglin, 2002 (Final PEA)). However, based on analyses provided in the Eglin Final PEA and in Eglin's Supplemental Information Request (2003)), NMFS concurs with Eglin that gunnery exercises are not likely to result in any injury or mortality to marine mammals.

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information.

Estimation of Take and Impact

Direct Physical Impacts (DPI)

Potential impacts resulting from air-to-surface test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. Marine mammals and sea turtles swimming at the surface could potentially be injured or killed by projectiles and falling debris if not sighted and firing discontinued. Small arms gunnery operations may offer a worst case scenario for evaluating DPI of EGTTR operations, mainly due to the comparatively large number of rounds expended. Some contain small amounts of explosives, but the majority do not. The assumptions made by Eglin for DPI calculations can be found in Eglin's Final PEA under Alternative 1 for this action. Approximately 606 small-arms gunnery firing events comprise the estimated level of potential DPI events, as shown in Table 4 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006).

DPI impacts are anticipated to affect only marine species at or very near the ocean surface. As a result, to calculate impacts, Eglin used corrected species densities (Table 4–23 in Eglin's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. As shown in Table 5 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) and correcting PEA Table 4–23), the impacts to marine mammals and sea turtles at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be very low, and mitigation measures that Eglin will employ under this action would reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (inert bombs, missiles, and drones) to impact marine mammals and sea turtles. The number of annual events expected are 551 bombs, 1183 missiles, and 99 drones (Table 6). As shown in Eglin's Final PEA and Table 7 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006), the potential for any DPI to marine mammals and sea turtles is extremely remote and can, therefore, be discounted.

Similar to non-gunnery/non-small arms DPI impacts, DPI impacts from gunnery activities may also affect marine mammals and sea turtles in the surface zone. Again, DPI impacts are anticipated to affect only marine species at or near the ocean surface. Tables 8 and 9 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) demonstrate that the potential for any DPI from gunnery activities are extremely remote and can be discounted.

Marine Mammal Take Estimates from Gunnery Activities

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the previous IHA on this action (71 FR 27695, May 12, 2006) and in this **Federal Register** notice. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed

for the shock trials of the *USS SEAWOLF* submarine and the destroyer *USS Winston S. Churchill* (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts include: (1) Mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Due to the small amounts of net explosive weight for each of the rounds fired in the EGTTR and the mitigation measures, mortality resulting from sounds generated in the water column was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS.

Criteria and methods for calculation for permanent and temporary threshold shift and Level B harassment (behavioral response) to noise from the air-to-surface gunnery exercises was provided by NMFS in detail in its **Federal Register** notices on the previous IHA for this action (71 FR 3474 (January 23, 2006), 71 FR 27695 (May 12, 2006). Criteria for assessing impacts include: (1) mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Due to the small amounts of net explosive weight (NEW) for each of the rounds fired in the EGTTR and the mitigation measures, mortality resulting from sounds generated in the water column was determined to be highly unlikely and is not considered further.

Permanent hearing loss is considered an injury and is termed permanent threshold shift (PTS). NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed a temporary threshold shift (TTS), meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as a Level B type of harassment. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in the shock trials to represent TTS was 12 pounds per square inch (psi) which, for the NEW used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa^2–s, total EFDL/SEL metric. The 12–psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, *Churchill* FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for charges considerably smaller than those used in the Navy shock trials, the 12–psi metric is not an adequate predictor of the onset of TTS.

Finneran *et al.* (2002) measured TTS in a bottlenose dolphin and a beluga whale exposed to single underwater impulses produced by a seismic water gun in San Diego Bay. The water gun was chosen over other seismic sources, such as air guns, because the impulses contain more energy at high frequencies where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4, and 30 kilohertz (kHz). A relatively small and short-term level of masked TTS (MTTS)(7 dB at 0.4 kHz and 6 dB at 30 kHz) occurred in the beluga whale at a peak pressure of 160 kilopascals (kPa), which is equivalent to 23 psi, 226 dB re 1 micro Pa peak-peak pressure, and 186 dB re 1 microPa^2–s. The maximum experimental peak pressure exposure of 207 kPa (30 psi, 228 dB re 1 microPa peak-peak pressure, 188 dB re 1 microPa^2–s) did not cause any measurable masked TTS in the bottlenose dolphin. The results of these field experiments represent the most current science available for the relationship between peak pressure and TTS in marine mammals. It is also considered precautionary for this project since the bottlenose dolphin did not incur an MTTS at the higher level of 30 psi. Therefore, until additional information becomes available, 23 psi is considered an appropriate and conservative metric for predicting the onset of pressure-related TTS from small explosive charges.

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran *et al.*, 2002; Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral effects are typically defined as alterations of trained behaviors. Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in subsequent sections of this document refer to such behavioral effects as ''sub-TTS Level B harassment.'' Schlundt *et al.* (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 micro Pa for the bottlenose dolphins and from 180 to 196 dB re 1 micro Pa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 176 dB in the greatest 1/3 octave band EFDL/SEL.

Table 10 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) summarizes the relevant thresholds for levels of noise that may result in injury, TTS or behavioral harassment to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf). Table 11 published in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) provides the estimated ZOI radii for the EGTTR ordnance. At this time, there is no empirical data or information that would allow NMFS to establish a peak pressure criterion for sub-TTS behavioral disruption.

As mentioned previously, the EGTTR live fire events are continuous events with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Live fire typically occurs within a 30 minute time frame, including all ordnance fired: 25–mm (Phase I), 40–mm (Phase II), and 105–mm (Phase III), and where the 105–mm ordnance are fired as separate rounds with up to 30-second intervals, the 25–mm and the 40–mm are often fired in

multiple bursts. These burst include multiple rounds (25 to 100) within a 10- to 20-second time frame. Eglin notes that even if animal avoidance once firing commences is not considered, an average swim speed (1.5 m/s) of animals would not allow sufficient time for new animals to re-enter the Level B harassment ZOI (23 psi) within the time frame of a single burst. As such, only the peak pressure of a single round is measured per burst and experienced at a given distance (49 m (161 ft; Phase I), 122 m (400 ft; Phase II)).

For daytime firing it is assumed that the average swim speed per cetacean is approximately 3 knots or 1.5 m/sec. As a conservative scenario, Eglin assumes that there is one animal present within or near the 216–m ZOI (FU 105–mm round ZOI) which may be potentially ensonified within the 23–psi TTS exposure at the time that the 105–mm live firing begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km2 or approximately 500 m (1640 ft) apart (all species) for the analyses for take estimates. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 216–m (709 ft) ZOI (23–psi TTS ZOI) in approximately 5.5 minutes, assuming a straight line path. With live fire events of the 105–mm occurring at a rate of approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105–mm rounds (20 rounds) would potentially be expended within this 5.5 minute time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed of 1.5 m/s (4.9 f/s) would allow sufficient time for new animals to re-enter the 23–psi TTS impact area. Allowing for a potential 2 minute break in firing after 10 rounds are expended, it is, therefore, conservative and reasonable to assume that nearly 3 to 4 individual animals could be exposed to the 23–psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and Level B harassment take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that although single animals may be ensonified more than once due to the time required to exit the 23 psi TTS ZOI, animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Similarly, as a conservative approach for nighttime firing, Eglin assumes that there is one animal present within or near the 90–m (295–ft) ZOI (105–mm TR ZOI) which may be potentially ensonified within the 23–psi TTS exposure zone at the time that the 105–mm round live firing phase begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km^2 (all species) for the approach of impact analyses for estimation of take. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 90–m (295–ft) ZOI (23–psi TTS ZOI) in approximately 5.5 minutes or the same time as with the 216–m ZOI (used for the 105–mm FU). The difference is the amount of time it takes the animal to exit the ZOI or in other words, how long the animals resides within the ZOI on a straight line path. With live fire events of the 105–mm round occurring at a rate of approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105–mm rounds (20 rounds) would potentially be expended within this 5.5-minute time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23–psi TTS impact area. Allowing for a potential 2-min break in firing after 10 rounds are expended, it is conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23–psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that, although single animals may be ensonified more than once due to the time required to exit the 23–psi TTS ZOI, individual animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Based on this discussion, Table 1 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of Eglin AFB's proposed mitigation measures (except use of the training round (TR)), which are discussed in the next section.

TABLE 1. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE

Species	Adjusted Density (#/km^2)	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-injurious 182 dB* EFD for TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Bryde's whale	0.007	<0.001	0.010	0.4	0.041
Sperm whale	0.011	<0.001	0.016	0.0	0.064
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	1.5	0.139
Cuvier's beaked whale	0.10	<0.001	0.015	0.6	0.058
Mesoplodon spp.	0.019	<0.001	0.028	1.2	0.110
Pygmy killer whale	0.030	<0.001	0.044	1.9	0.174
False killer whale	0.026	<0.001	0.038	1.6	0.151
Short-finned pilot whale	0.027	<0.001	0.039	1.7	0.157
Rough-toothed dolphin	0.028	<0.001	0.041	1.7	0.163
Bottlenose dolphin	0.810	0.006	1.177	50.1	4.706

TABLE 1. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE—Continued

Species	Adjusted Density (#/km^2)	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-injurious 182 dB* EFD for TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Risso's dolphin	0.113	0.001	0.164	7.0	0.657
Atlantic spotted dolphin	0.677	0.005	0.984	41.9	3.934
Pantropical spotted dolphin	1.077	0.008	1.565	66.7	6.258
Striped dolphin	0.237	0.002	0.344	14.7	1.377
Spinner dolphin	0.915	0.007	1.330	56.6	5.316
Clymene dolphin	0.253	0.002	0.368	15.7	1.470
Unidentified dolphin**	0.053	<0.001	0.077	3.3	0.308
Unidentified whale	0.008	<0.001	0.012	0.5	0.046
All marine mammals	4.325	0.032	6.29	271.1	25.13

km^2=square kilometers; NA=not applicable
dB-dB re 1 μPa^2 -s
**Bottlenose dolphin/Atlantic spotted dolphin

Proposed Mitigation Measures

Under its recent IHA, Eglin AFB employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. The proposed mitigation for this proposed IHA is substantially similar with a few modifications. Eglin AFB states that it is committed to assessing the mission activity for opportunities to provide operational mitigation (i.e., ramping up and using nighttime training rounds), while potentially sacrificing some mission flexibility.

Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will be either immediately halted and/or relocated as necessary or suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with IR and TV monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

Development of the TR

The largest type of ammunition used during typical gunnery missions is the 105–mm (4.13–in) round containing 4.7 lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the Air Force developed a 105–mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to significantly reduce the effects of nighttime operations, when visual surveying for marine mammals is of limited effectiveness. Use of the TR at night dramatically reduces the risk of harassment, and Eglin AFB anticipates a 96 percent reduction in impact by using the 105–mm TR.

Ramp-Up

Eglin incorporated a ramp-up procedure by beginning with the smallest round (or the round having least impact) and proceeding to subsequently larger size rounds (in this case the lowest caliber of munition up to the 105–mm FU round). Theoretically, this allows animals to perceive steadily increasing sounds and to react, if necessary. Alerting animals in advance of injurious sound waves by transmitting low-power ''warning'' signals a short time before the action provides a safeguard where there is a potential for the risk of injury.

Other Mitigation

Under the previous IHA, NMFS required additional mitigation measures to protect marine life. These requirements are:

(1) Test firing will be conducted only when sea surface conditions are sea state 3.5 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5–nm (9.3–km) wide prospective target area to attempt to sight any protected species that may be present (e.g., marine mammals, sea turtles, and Sargassum rafts). The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a recommended altitude of 1,000 ft (305 m). Provided protected species are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of listed and non-listed marine mammals and sea turtles. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the air-to-ground gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (> 12 nm, 22 km). This would potentially restrict most gunnery

activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 minutes prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles (NVGs), and other onboard sensors to search for marine mammals while performing area clearance procedures during night-time pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 minutes or the mission location relocated and resurveyed.

Monitoring and Reporting

The NMFS Biological Opinion on this action recommended certain monitoring measures to protect marine life. As a result, NMFS imposed these same requirements under the previous IHA:

(1) Eglin will develop and implement a marine species observer-training program in coordination with NMFS. This program will primarily provide expertise to Eglin's testing and training community in the identification of protected marine species during surface and aerial mission activities in the GOM. Additionally, the A-S gunnery mission aircrews will participate in the species observation training. As a result, designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and initiating a spiraling descent down to an observation altitude of approximately 1,500 ft. (457 m) elevation. Rates of descent will occur over a 3 to 5 minute time frame.

(3) Eglin will track their use of the EGTR for test firing missions and protected species observations, through the use of mission reporting forms.

(4) A-S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A-S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to the NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (i.e., injury or mortality) must be immediately reported to the NMFS represent-ative and to the respective stranding network representative.

Proposed Modifications to the Mitigation and Monitoring Requirements

Eglin AFB has requested several modifications to its IHA to be incorporated into the new IHA.

As of October 27, 2006, two A-S gunnery missions have been attempted (one of the missions was ultimately aborted due to sea state). As a result of flying live missions over the ocean, aircrews have requested a modification to three components of the 2006 IHA requirements. These components are: (1) protected species surveys, (2) ramp-up procedures, and (3) sea state restrictions.

Protected Species Surveys-Altitude and Equipment

Currently, pre-mission surveys for marine mammals and other protected species must be commenced at a maximum altitude of 1,500 ft (457 m)(with 1,000 ft (305 m) recommended) during the day and at 2,000 ft (610 m)(1,500 ft (457 m) recommended) at night. Visual scans, as well as all applicable instruments, are to be used to survey for protected species at the water surface. Aircrews have reported that these altitudes are not safe, and that the onboard instrumentation used for surveys actually performs better at a higher altitude.

The propeller-driven AC–130 aircraft, which is used for all A-S gunnery missions, is among the largest and heaviest in the Air Force, weighing up to approximately 150,000 lbs (68040 kg) depending on equipment configuration. If an emergency situation, such as a malfunction of one or more engines, occurred during the protected species surveys, the aircraft would likely lose altitude initially. The AC–130 does not perform well with less than a full compliment of engines. At 1,000 to 2,000 ft (305 to 610 m), the pilots would have little time to recover before striking the water surface, which would result in potential human fatalities and certain loss of the aircraft. The AC–130 is typically flown at a minimum altitude of 4,500 ft (1372 m). Eglin AFB notes that the 2004 National Defense Authorization Act amendments to the MMPA explicitly require consideration of personnel safety during military readiness activities.

AC–130 gunships are equipped with low-light TV cameras and ANIAAQ–26 Infrared Detection Sets (IDS). The TV cameras operate in a range of electromagnetic radiation of 532 to 980 nanometers (visible and near-visible light), and the IDS system operates in the IR portion of 7.5 to 11.7 micrometers. IR systems are capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies, or from reflected and scattered thermal energy. In contrast to typical night-vision devices, visible light is not necessary for object detection. IR systems are equally effective during day or night use.

The ANIAAQ–26 IDS system produces a composite video signal which is displayed on an onboard television monitor. The IDS provides imagery and accurate line-of-sight information for an operator to detect, acquire, identify, and track targets. Additional capabilities include providing imagery suitable for reconnaissance and low-level navigation. The IDS is capable of detecting very small thermal differences (the exact thermal sensitivity is classified). Three fields-of-view (FOV) are available for the IDS. All are typically used during a mission to survey the area and acquire targets. These are:

- Wide FOV (1.80 magnification) aides in low altitude flight, navigation, and area search, and also provides sufficient resolution to recognize typical terrain features such as roads, rivers, and bridges.
- Medium FOV (10.8 magnification) provides for immediate target area orientation and target detection.
- Narrow FOV (42.9 magnification) provides small target identification, target recognition, and precise line-of-sight angular adjustments. A 2X FOV (85.80 magnification) provides electronic magnification of the Narrow FOV.

The IDS provides pointing information regarding its optical line-of-sight, and features a continuous 360–degree azimuth Field of Regard (FOR) and +60 degree up-look to -105 degree down-look elevation FOR. The line-of-sight is inertial-stabilized with regard to

airplane angular motions and is directed to pointing angles via programmed commands, operator commands, or position commands from the avionics systems.

IR and low-light TV systems are used during both daytime and nighttime missions (ambient light is sufficient for the TV system at night). The IDS is the primary detection system and is used during all gunship missions. Low-light TV and visual surveys are used to supplement the IDS system as appropriate. The magnification of the TV system is comparable to that of the IDS. Although the IDS is capable of detecting infrared emissions at altitudes in excess of 12,500 ft (3810 m), an altitude range of 6,000 to 9,000 ft (1829 to 2743 m) affords the optimal slant range for overall sensor performance and target orientation.

The sensor suite is considered superior to the human eye for detecting targets on the water surface, even at altitudes as low as 1,000 ft (305 m). This is particularly true for night observations. IR systems havc been used to detect whales and dolphins (Baldacci et al., 2005). Although the central portion of cetacean bodies are insulated with blubber, peripheral areas such as the flukes and fins are relatively poorly insulated. These areas may be detected thermally. Also, the movement of a cetacean's body at the surface causes heat to be radiated at different angles, resulting in an apparent temperature difference that can be detected by IR sensors. Additional areas of thermal discrimination include the blowhole, the blow, and areas of water disturbance where water of different temperatures is mixed. However, high humidity, rain, fog, high waves, and whitecap conditions can decrease the effectiveness of IR detection. Figure 1 in Eglin's January 22, 2007 renewal request shows examples of all FOVs for the IDS system, as an operator would see them on a monitor. All examples represent a 7.8–ft (2.4 m) dolphin at 6,000 ft (1829 m) altitude (above ground level, or AGL) and at a slant range of 8,000 ft (2438 m). All four FOVs would be used during protected species surveys. Based on the above discussion, the AC–130 aircrews recommend a protected species survey altitude of 6,000 ft (1829 m), using all sensors, for both day and night missions.

The gunship sensor suite provides the best daytime and nighttime performance in normal weather and sea conditions at this altitude range. At lower altitudes, the sensors' area of coverage is smaller for any given field of view. In addition, the sensors' effectiveness is diminished due to magnification factors. For example, at an altitude of 1,000 ft (305 m), the 2X and Narrow FOV settings would cause over-magnification, resulting in decreased ability to discriminate targets. In addition to considerations of sensor performance, a 6,000–ft (1829–m) survey altitude would be significantly safer than the current 1,000- to 2,000–ft (305- to 610–m)range.

Eglin AFB therefore proposes a revised protocol for protected species surveys. The AC–130 gunship would travel to a potential mission location at an altitude of 6,000 ft (1829 m). After arriving at the site, the aircrew would initiate a surface vessel and protected species survey at a 6,000 ft (1829 m) altitude. The aircraft would circle the target site and continue the survey for 15 minutes. During the survey, aircrews would use the ANIAAQ–26 IDS to search the water surface for vessels and marine species. The low-light TV system would be used to supplement the IDS system. For missions conducted during daylight hours, the aircrew would visually scan the water surface as well. The live fire phase of the mission would not begin until the site is determined to be clear of vessels and protected species during the 15-minute survey. If a marine mammal, sea turtle or Sargassum bed is identified during the pre-mission survey or during the mission, or if any object besides the target is detected but cannot conclusively be identified, the mission would be paused or relocated as appropriate. Aircrews would conduct a post-mission survey for 5 minutes at an altitude of 6,000 ft (1829 m) using the IDS and low-light television systems and, for daytime missions, visual scans. Eglin AFB considers that the protocol described here would provide effective mitigation to the risks posed to protected species during A-S gunnery missions. In summary, Eglin AFB believes that sensor-based observation effectiveness at 6,000 ft (1829 m) altitude is superior to visual survey effectiveness at 1,000 ft (305 m) altitude and should replace the previous mitigation measure.

Ramp-up Procedures

The 2006–2007 IHA stipulates that ramp-up procedures are to be used during A-S gunnery missions. This process involves beginning with the smallest gunnery round, which has the least impact, and proceeding to subsequently larger size rounds. The rationale is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The gunships' weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105–millimeter rounds). Eglin AFB believes the 2006–2007 IHA is somewhat ambiguous regarding whether the ramp-up procedure is required only for the first (calibrating) phase or throughout the entire mission. Eglin AFB proposes that the ramp-up procedure be required for the initial gun calibration, and that after this phase the guns may be fired in any order. Eglin believes this process complies with the intent of the ramp-up requirement. Marine species will have opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol would allow a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This diminishes the possibility of a lengthy pause in live fire which, if greater than 10 minutes, would necessitate re-initiation of protected species surveys.

Sea State Restrictions

The 2006–2007 IHA states that air-to-surface gunnery missions are to be conducted only in sea states of 3 or less on the Beaufort scale. A sea state of 3 or less, with a maximum wind speed of 10 knots (11.5 mph, 18.5 km/hr) which is considered a gentle breeze, is fairly common off the Gulf coast of Florida; however, a large portion of time can be categorized as a sea state of 4 (1–16 knots (13–18 mph, 21–29 km/hr) which is considered a moderate breeze). Therefore, the availability of the EGTTR for gunship use is limited during anything over sea state 3, especially during the winter. Eglin AFB proposes gunship missions be allowed in sea states up to 4 on the Beaufort scale. This sea state encompasses wind speed up to a maximum of 16 knots (18 mph, 29 km/hr). Under these conditions, whitecaps are fairly frequent on the sea surface,

but sea spray does not occur. Sea spray, whitecaps, and large waves can decrease the effectiveness of LR detection. However, missions are not conducted if such conditions make observation of the gunnery target problematic. It is expected that marine species can be observed in weather conditions that allow observation of the gunnery target flare. Wave height is difficult to determine from the air, particularly at night. Therefore, Eglin proposes that wind speed, as provided by accepted forecasting outlets such as the National Weather Service, be considered the determining factor for weather restrictions.

Preliminary Conclusions

For reasons described in this **Federal Register** document, NMFS has preliminarily determined that Esglin AFB's A-S Gunnery activity will not result in the mortality or serious injury of marine mammals and, would result in, at worst, a temporary elevation in hearing sensitivity (known as temporary threshold shift or TTS). As indicated in Table 1, Eglin AFB and NMFS estimated in 2006 that up to 271 marine mammals may incur this form of Level B harassment annually. Also, these gunnery exercises have the potential to result in a temporary modification in behavior by marine mammals. In 2006, NMFS estimated that up 25 marine mammals may experience a behavioral response to these exercises during the time-frame of an IHA (see Table 1). These air-to-surface gunnery activities are expected to have a negligible impact on the affected species or stocks. In addition, the potential for TTS is very low and will be mitigated to the lowest level practicable through the incorporation of the mitigation measures mentioned in this document. NMFS believes that the proposed modifications to the current mitigation requirements will not result in an increase in Level B harassment levels estimated in 2006. the previously discussed modifications (protected species survey altitude, ramp-up procedures and sea state conditions) to the mitigation measures in Eglin's existing IHA for the A-S gunnery exercises in the EGTTR, is unlikely to change NMFS' 2006 determination.

Endangered Species Act (ESA)

Consultation under section 7 of the ESA on Eglin AFB's A-S Gunnery Missions in the EGTTR was completed on December 18, 1998. Consultation was reinitiated by Eglin AFB with NMFS on February 13, 2003, and concluded on October 20, 2004. A NMFS Biological Opinion issued on October 20, 2004, concluded that the A-S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has preliminary determined that this action, including the modifications to the mitigation and monitoring measures, does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action and reinitiation of consultation is not necessary. However, prior to issuance of this IHA, NMFS will make a final determination whether additional consultation is necessary.

National Environmental Policy Act (NEPA)

The U.S. Air Force (USAF) made a Finding of No Significant Impact (FONSI) determination on August 18, 2003, based on information contained within its November, 2002 Final PEA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. The USAF determined, therefore, that an environmental impact statement (EIS) would not be prepared. NMFS noted that Eglin AFB had prepared a Final PEA for the EGTTR activity and made this Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in Eglin AFB's Final PEA and determined that Eglin AFB's Final PEA accurately and completely describes the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted Eglin AFB's Final PEA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also took into consideration updated data and information contained in the NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474 (January 23, 2006); 70 FR 48675 (August 19, 2005)). NMFS has preliminarily determined that the current proposed action will not result in a significant modification in the previously reviewed activity and, therefore, a new EA, supplemental EA or an EIS for the issuance of an IHA to Eglin AFB for this activity is not necessary.

Proposed Authorization

NMFS proposes to reissue an IHA to Eglin AFB for conducting A-S gunnery exercises within the EGTTR in the northern GOM provided the mitigation, monitoring, and reporting requirements described in this **Federal Register** notice are incorporated. NMFS has preliminarily determined that the proposed activity is unlikely to result in injury or mortality to marine mammals, and would have a negligible impact on the affected marine mammal species or stocks. The MMPA provision relating to impacts on subsistence are not relevant.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA (see **ADDRESSES**).

Dated: May 24, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10372 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA39

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Republic of Ecuador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Ecuadorian-flag purse seine vessels or purse seine vessels operating under Ecuadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The renewal is effective from April 1, 2007, through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of Ecuador or obtained from the IATTC and the Department of State and has determined that Ecuador has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Republic of Ecuador's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels or purse seine vessels operating under Ecuadorian jurisdiction. Ecuador's affirmative finding will remain valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: May 23, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–10373 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; NTIA/FCC Web-Coordination Collection

ACTION: Notice.

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.

DATES: Written comments must be submitted on or before July 30, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. 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 and instructions should be directed to: Steve Litts, Technology Speciality, Systems Development Branch, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4096, 14th and Constitution Avenue, NW., Washington DC 20230 (or via the Internet at *Slitts@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) developed a web-based system that collects specific identification information (e.g., company name, location and projected range of the operation) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The web-based system provides a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or the need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The website allows the non-federal applicant's proposed radio site information to be analyzed, and a real-time determination to be made as to whether there is a potential for interference to, or from, existing Federal government radio operations in the vicinity of the proposed site. This web-based coordination system helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The information provided by non-federal applicants also assures the protection of the applicant's station from radio frequency interference from future government operations.

The non-federal applicants are required to submit information regarding the physical characteristics of the proposed radio station and the proposed location of the operation. This information is necessary for a determination of electromagnetic compatibility among radio stations in the frequency band. The name and address of the proposed licensee is also required, as currently required by the Federal Communications Commission. All data requested on the website is currently required for the coordination of non-federal radio stations in RF spectrum that is shared with the federal government.

II. Method of Collection

The application and instructions are on the NTIA website. Non-federal applicants submit applications electronically through the Web site.

III. Data

OMB Number: 0660–0018.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, state or local government.

Estimated Number of Respondents: 3,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Respondent Burden Hours: 750.

Estimated Total Annual Respondent Cost Burden: $0.

Legal Authority: 47 U.S.C. 902(b)(2)(L)(ii).

IV. Request for Comments

Comments are invited on: (a) Whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–10344 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

RIN 0660–AA16

Docket Number: 0612242667—7150—02

Instructions to Assist Manufacturers Submitting Digital-to-Analog Converter Box Test Results and Sample Equipment for Certification.

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice.

SUMMARY: This notice provides guidance for manufacturers that intend to submit digital-to-analog converter boxes to the National Telecommunications and Information Administration (NTIA) for certification as part of the Digital-to-Analog Converter Box Coupon Program. This notice also provides address and contact information regarding the required submission of test results and sample equipment.

FOR FURTHER INFORMATION CONTACT: Art Wall, Technology Advisor, DTV Converter Coupon Program, awall@ntia.doc.gov, (410) 643–1649.

SUPPLEMENTARY INFORMATION: On March 15, 2007, NTIA published regulations to implement and administer a coupon program for digital-to-analog converter boxes. Under this program, U.S. households will be eligible to request up to two $40 coupons to be used toward the purchase of up to two digital-to-analog converter boxes.[1] Converter boxes are necessary for consumers who may wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable, satellite, or other pay television service after February 17, 2009 - - the date that full power television broadcasters are required to cease analog broadcasting.[2]

Among other purposes, the Final Rule specifies that manufacturers interested in participating in the coupon program must submit a Notice of Intent (NOI) to NTIA. The regulations provide the necessary information to include in the NOI and also provide technical specifications and features required for a converter box to qualify for the coupon program. The regulations also include specific instructions for manufacturers to submit test results along with a sample of the tested equipment to NTIA.[3] The preamble to the regulations notes that NTIA has entered into an agreement with the Federal Communications Commission (FCC) whereby the FCC may review the manufacturers' test results and converter boxes if necessary.[4] The preamble also notes that a subsequent Public Notice will provide manufacturers with specific address and contact information regarding the required submission of test results and sample equipment.[5] Moreover, section 301.5(e) of the Final Rule states that NTIA may issue other guidance and test-bed conditions. Accordingly, this Notice provides the following information: (1) the Notice of Intent (NOI) submission; (2) testing guidance; (3) test report (format and content) guidance; (4) shipping of samples; and (5) NTIA processing.

The guidance information provided in this notice is not binding. Compliance with the requirements contained in the regulations may be demonstrated by following the suggestions contained in this document or by alternative means.

[1] *See* Rules to Implement and Administer a Coupon Program For Digital-to-Analog Converter Boxes (Final Rule), 72 FR 12097 (March 15, 2009).

[2] *See* Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006). Section 3002(a) of the Act amends Section 309(j)(14)(A) of the Communications Act of 1934 so that analog full-power television licenses will terminate on February 17, 2009. Section 3002(b) of the Act directs the FCC to terminate analog television licenses for full-power stations by February 18, 2009.

[3] 47 C.F.R. § 301.5.

[4] *See* Final Rule at ¶ 101; *see also* 47 C.F.R. § 301.5(f).

[5] Final Rule at ¶ 101.

Manufacturers intending to participate in the converter box coupon program should submit test results and sample equipment to NTIA in accordance with the guidelines specified below:

1. Notice of Intent

a. The NOI shall be submitted to NTIA at least three months prior to submission of the test report and samples pursuant to section 301.5(a) of the Final Rule. Accordingly, the NOI shall contain the following information: name, title, email and mailing address, and the phone number of an individual responsible for the manufacturer's submission; a brief description of the converter box, including permitted as well as required features; and the date on which the samples and test report for the proposed converter(s) may be ready for submission for review. The NOI shall be faxed to NTIA at (202) 482–4626 or delivered to: DTV Converter Coupon Program, Room 4809, NTIA/OTIA, U.S. Department of Commerce, Washington, D.C. 20230. The NOI will be kept business confidential pursuant to section 301.5(b) of the Final Rule. A NOI form is available on NTIA's web site at *www.ntia.doc.gov*.

b. Pursuant to section 301.5(c), NTIA will provide the manufacturer with shipping information in a letter of acknowledgement after NTIA receives the NOI. Subsequent to receipt of the acknowledgement, a written authorization for submitting the samples and test report will be electronically sent to the contact person listed in the NOI. See item 3(a), below, for electronically submitting the test report, and item 4, below, for shipping the samples.

2. Testing Guidance

a. Source Material: For the performance specifications in items 8 through 13 and item 15 of Technical Appendix 1 to the Final Rule, it is recommended that the tests be performed with a High Definition data stream (i.e., resolution of 720p or higher) with motion.

b. Field Ensembles (#14): NTIA encourages manufacturers to specify which 30 of the 50 field ensembles identified in ATSC A/74 were tested successfully.

c. Single Static Echo (#15): NTIA encourages manufacturers to specify whether the model was tested against Criteria A or Criteria B as defined in Technical Appendix 1. If Criteria B is chosen, manufacturers should identify which 37 of the 50 field ensembles were tested successfully.

d. Manufacturers submitting converters intended to comply with the

EPA Energy Star Program — which is a permitted but not required specification for Coupon-Eligible Converter Boxes (CECBs) — should seek certification from EPA that the CECB meets all requirements for certification under the EPA program. The EPA requirements can be found at *http://www.energystar.gov/index.cfm*.

3. Test Report Guidance

a. When a manufacturer receives an authorization to submit the test report and samples pursuant to section 301.5(c), the test report is to be sent to Art Wall, Technical Advisor, at *awall@ntia.doc.gov*. To expedite processing, NTIA encourages applicants to submit the test report in an electronic format using Microsoft Word, pdf or jpg type files. Files larger than 5 Mbs should be divided into separate files of 2 Mbs or less, if possible. If a manufacturer is not able to provide test results electronically in the formats prescribed, the manufacturer should contact Art Wall, Technical Advisor at *awall@ntia.doc.gov* to make alternate arrangements.

b. NTIA encourages manufacturers to submit test reports that demonstrate that each model proposed to be a CECB meets all the performance specifications and features set forth in Technical Appendix 1 of the Final Rule as well as applicable FCC Rules.

c. Each model proposed may include ''permitted'' features but shall not include ''disqualifying'' features set forth in Technical Appendix 2 of the Final Rule, pursuant to section 301.5(d). If the proposed CECB includes permitted features, it would assist NTIA's evaluation if the test results or certificates document how those features operate or have been implemented.

d. To assist in NTIA's evaluation of the proposed CECB, NTIA encourages applicants to include in the test report information such as:

1. An operational description of each proposed CECB.
2. A final copy of the proposed manual that will be provided to the end user.
3. A list of equipment (complete with calibration data) used by the manufacturer when performing each of the required tests.
4. A block diagram showing all the major elements of each proposed CECB.
5. A block diagram depicting the equipment used and the measurement setup for each test.
6. Internal and external photographs of each proposed CECB. The photographs should be of sufficient clarity to show the make and model number on the label, the front panel controls, connection points on the back panel, internal components and circuit board layouts.

e. Pursuant to section 301.5(f), reports of test conditions and test results must be clear and comprehensive so that they can be easily interpreted by NTIA and others reviewing them. Moreover, in accordance with section 301.5(g), each test report shall include a certification of the testing supervisor as to its authenticity, completeness and accuracy based on personal knowledge. The manufacturer/applicant should also sign the report certifying that the sample tested is representative of production units.

4. Guidance for Shipping Proposed Coupon-Eligible Converter Box Samples

Manufacturers are to supply two production sample converter boxes pursuant to section 301.5(c) of the Final Rule. They are to be shipped as follows:

Test samples should NOT be shipped until the applicant receives a specific authorization from NTIA to ship. A copy of NTIA's shipping authorization identifying each model to be shipped shall accompany the samples.

SHIPPING ADDRESS: (Courier Service, Freight, or Air Service)
DTV Converter Coupon Program
FCC Laboratory
7435 Oakland Mills Road, Gate A
Columbia, MD 21046
Attention: Bill Hurst
Telephone: (301) 362–3000

Special note to foreign applicants— Foreign applicants with United States subsidiaries or agents should ship equipment to those facilities for forwarding to the Laboratory. If no American subsidiary is available, arrangements must be made for clearance of shipment through U. S. Customs and delivery to the FCC Laboratory. The U.S. Government will not make delivery arrangements or pay any related charges associated with shipments.

If the applicant requires notification that the samples have been received at the FCC Laboratory, the applicant should contact its shipper for delivery date confirmation.

Pursuant to the regulations, the samples for each proposed CECB shall be production line samples. Some characteristics that may assist NTIA in confirming production line samples are: a permanently attached label showing the make (manufacturer's name or trade name), serial number and model number. The label information (except for serial number) should agree with the information shown on the test report. Also, NTIA encourages applicants to include any accessory that would facilitate testing and any permitted accessory features proposed by the manufacturer, such as a 300 ohm connector, a cable with 3 female RCA connectors, etc.

NTIA does not intend to return the samples to the manufacturer/applicant.

5. NTIA Processing

The manufacturer's report of each proposed CECB will be reviewed for accuracy and completeness and to determine: (1) if the proposed model meets the performance specifications in Technical Appendix 1; (2) if the proposed CECB includes permitted features listed in Technical Appendix 2, that those features function properly; and (3) that the proposed CECB does not contain a disqualifying feature. NTIA/FCC testing will be performed on some or all of the models. The level of testing will be based on engineering judgments during the review of the test report. Request for additional information, if necessary, may cause delays in completing an evaluation of a proposed CECB. Reasonable attempts will be made to expedite review of each proposed CECB, but the applicant should not contact the Technical Advisor unless the applicant has a valid technical question.

Pursuant to section 301.5(h) of the Final Rule, NTIA will provide prompt notification to each manufacturer as to whether the model has met technical approval. NTIA will maintain a list of approved CECBs to distribute to consumers and participating retailers.

These procedures are intended to assist in managing the review and evaluation of each proposed CECB. Additional guidance on testing or submission procedures may be provided on NTIA web page under Frequently Asked Questions, pursuant to Section 301.5(e), *www.ntia.doc.gov*.

Questions about the procedure for submitting samples and test reports for review and approval may be submitted to:

Art Wall, Technical Advisor
DTV Converter Coupon Program
NTIA/OTIA Room 4809
U.S. Department of Commerce
Washington, D.C. 20230
Tel: (410) 643–1649
Fax: (202) 482–4626
Email: *awall@ntia.doc.gov*

Dated: May 23, 2007.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E7–10282 Filed 5–29–07; 8:45 am]

BILLING CODE 3510–60–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the AmeriCorps Alumni Profile Cards (OMB Control Number 3045–0048). The collections was granted a 3 year approval until October 31, 2007, by OMB. The Corporation is now seeking approval to continue this collection for 3 more years.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 30, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; *Attention:* David Premo, Corporation Relations Associate; Office of Corporate Relations, Room 10302E; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8102C at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3460, *Attention:* David Premo, Corporate Relations Associate, Office of Corporate Relations.

(4) *Electronically through the Corporation's e-mail address system: dpremo@cns.gov.*

FOR FURTHER INFORMATION CONTACT: David Premo, (202) 606–6717, or by e-mail at *dpremo@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation sends out AmeriCorps Alumni Profile Cards to former AmeriCorps and VISTA members' home addresses requesting that they complete the card and return it to the Corporation. The purpose of the card is to enhance communications between the Corporation and former AmeriCorps members to provide them with information on Corporation activities, and to seek their assistance in volunteer recruitment activities.

Current Action

The Corporation is soliciting public comments so it can obtain renewed approval from OMB for a three year time period of the distribution and collection of AmeriCorps Alumni Profile Cards. The goal is to continue to help the Corporation to more accurately and effectively gear communication to former members and to provide additional resources to these former members. Submission is entirely voluntary.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Alumni Profile Card.

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: Individuals.

Total Respondents: 12,000.

Frequency: Continuous.

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 22, 2007.

Jonathan Williams,

Director, Corporate Relations.

[FR Doc. E7–10272 Filed 5–29–07; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the Spirit of Service Award nomination Guidelines for Senior Corps, AmeriCorps, and Learn and Serve America. On October 1, 2004, these collections were granted a 3 year approval until September 30, 2007, by OMB. The Corporation is now seeking approval to continue this collection for 3 more years.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 30, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; *Attention:* David Premo, Corporation Relations Associate; Office of Corporate Relations, Room 10302E; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8102C at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3460, *Attention:* David Premo, Corporate Relations Associate, Office of Corporate Relations.

(4) Electronically through the Corporation's e-mail address system: *dpremo@cns.gov.*

FOR FURTHER INFORMATION CONTACT: David Premo, (202) 606–6717, or by e-mail at *dpremo@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Spirit of Service Awards enable the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs, Senior Corps, AmeriCorps, and Learn and Service America. The Corporation plans to continue to utilize specific nomination guidelines for each of the programs and follow a formal nomination process, which involves voluntary information collection from non-government individuals.

Since its 2004 the Corporation has honored distinguished individuals and organizations with the Spirit of Service Awards. Prior to 2003, AmeriCorps recognized its outstanding it outstanding members annually through the All-AmeriCorps Awards, which were initiated 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America recognized exemplary programs and participants through its Leaders School selection and the President's Student Service Awards.

Current Action

The Corporation is soliciting public comments so it can obtain renewed approval from OMB for a three year time period of the Spirit of Service Awards nomination for its three programs. The goal is to continue the nomination process in order to select the annual Spirit of Service Award winners in time to receive their awards during the Corporation's Annual National Conference on Community Volunteering and National Service.

Part I

Type of Review: Continued collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—Senior Corps.
OMB Number: 3045–0091.
Agency Number: None.
Affected Public: Individuals, not-for-profit institutions, and State, Local or Tribal Government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: Averages 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part II

Type of Review: Continued collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—AmeriCorps.
OMB Number: 3045–0092.
Agency Number: None.
Affected Public: Individuals, not-for-profit institutions, and State, Local or Tribal Government.
Total Respondents: 200.
Frequency: One time.
Average Time per Response: Averages 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part III

Type of Review: Continued collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—Learn and Serve America.
OMB Number: 3045–0093.
Agency Number: None.
Affected Public: Individuals, not-for-profit institutions, and State, Local or Tribal Government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: Averages 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 22, 2007.

Jonathan Williams,

Director, Corporate Relations.

[FR Doc. E7–10273 Filed 5–29–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 07–30 with attached transmittal and policy justification.

Dated: May 22, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–C

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

MAY 1 8 2007

In reply refer to:
I-07/005729-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-30, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $350 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Transmittal No. 07-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Iraq

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$350 million
TOTAL	$350 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** technical assistance to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Iraqi Security Forces. The Air Force Center for Environmental Excellence (AFCEE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, garrison, and operational requirements of the Iraqi Ministry of Defense. The scope of the program includes provision of technical assistance for facilities and infrastructure in support of twelve separate construction projects throughout the country of Iraq. The facilities and infrastructure planned include, new temporary vehicle storage facilities, medical clinics, hospital steam plant, security walls, training barracks/facilities, dining facilities, recruit training facilities, training, maintenance and supply buildings, and utilities systems (including heating, water, sewer, and electricity). The facilities to be provided at the regional brigade locations include barracks, training, maintenance, and storage facilities, medical clinic, communications center, and required utilities. Services include support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Iraqi military engineers, other technical assistance, contractor engineering services, and other related elements of logistic support.

* as defined in Section 47(6) of the Arms Export Control Act.

(iv) Military Department: Air Force (GAL)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: MAY 1 8 2007

POLICY JUSTIFICATION

Iraq – Technical Assistance for Construction of Facilities and Infrastructure

The Government of Iraq has requested a possible sale of technical assistance services to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Iraqi Security Forces. The U.S. Air Force Center for Environmental Excellence (AFCEE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, garrison, and operational requirements of the Iraqi Ministry of Defense. The scope of the program includes technical assistance for construction of facilities and infrastructure in support of twelve separate construction projects throughout Iraq. The facilities and infrastructure planned include new temporary vehicle storage facilities, medical clinics, hospital steam plant, security walls, training barracks/facilities, dining facilities, recruit training facilities, training, maintenance and supply buildings, and utilities systems (including heating, water, sewer, and electricity). The facilities to be provided at the regional brigade locations include barracks, training, maintenance, and storage facilities, medical clinic, communications center, and required utilities. Services include support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Iraqi military engineers, other technical assistance, contractor engineering services, and other related elements of logistic support. The estimated cost is $350 million.

This proposed sale would contribute to the foreign policy and national security of the U.S. by enhancing Iraq's capacity to support USG Operation Iraqi Freedom efforts, and by supporting Iraq's legitimate need for military independence.

This proposed sale would enable Iraq to support the recruitment, training, bed-down, and operational effectiveness of its military; to establish security and stability throughout Iraq; and to promote the stability and development of a friendly, democratic central government.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The AFCEE is the principal organization that will direct and manage this program. The AFCEE will provide services through both in-house personnel and contract services. Contracts will be procured in accordance with Federal Government contracting law and regulations. There are no known offset agreements proposed in connection with this potential sale.

The estimated number of U.S. Government and contractor representatives to be assigned to Iraq to implement the provisions of this proposed sale will vary between 15 and 100 representatives. The ultimate number will be determined during the program execution.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–2637 Filed 5–25–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

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 Code of Federal Regulations (CFR) 102–3.140 through 160, the Department of Defense announces the forthcoming public meeting:

Name of Commission: President's Commission on Care for America's Returning Wounded Warriors (hereafter referred to as the Commission).

Date of Meeting: June 18, 2007.

Time of Meeting: 10 a.m. to (To Be Determined).

Place of Meeting: Ronald Reagan Building and International Trade Center 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Purpose of Meeting: To obtain, review, and evaluate information related to the Commission's mission to examine the care provided to wounded service members. The Commission will receivE briefings on topics relating to the care and rehabilitation of wounded service members.

Agenda: 9 a.m. to 9:45 a.m. Administrative Work Meeting (Not Open to the Public). 10 a.m.—(Public Session).

Presentations (May Vary)

Panel of Wounded Soldiers and Caretakers,

Department of Veteran Affairs Family Outreach and Programs for the Families of Wounded Warriors,

Private Sector Resources for Families,

Faith Based Resources for Families,

Department of Defense Family Outreach and Programs for the Families of Wounded Warriors),

Sub Committee Site Visit Reviews for Chicago and San Diego Public Comment.

Subject to the availability of seating, this meeting is open to the public.

Interested persons or organizations may submit written statements for consideration by the Commission at any time or in response to the stated agenda of a planned meeting. Persons desiring to make an oral presentation or submit a written statement to the Commission for the 18 June 2007 meeting must notify the point of contact listed below no later than 13 June 2007.

Oral presentations by members of the public will be permitted only on 18 June at 1 to 1:30 before the full Commission. Presentations will be limited to 5 minutes. The Executive Director and the Designated Federal Official will select individuals for oral presentations and notify them in advance of the opportunity to make a 5 minute presentation to the Commission.

The Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 13 June, 2007, 5 p.m. and one copy of any material that is intended for distribution at the meeting.

Persons submitting a written statement must submit one copy of the statement to the Commission staff by 13 June, 2007, 5 p.m.

Point of Contact is Denise Dailey, Teresa Barnes, or Leslie Smith, toll free 877–588–2035 or Fax statements (703) 588–2046.

For Further Information On Submitting Statements Contact: Denise Dailey, Teresa Barnes or Leslie Smith, toll free 877–588–2035 or Fax statements (703) 588–2046.

Dated: May 23, 2007

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2658 Filed 5–29–07; 8:45 am]

BILLING CODE 5007–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 29, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information

Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52,040.

Burden Hours: 162,173.

Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 6,600 Title IV postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the ''redesign of relevant data systems to improve the usefulness and timeliness of the data collected by such systems.'' As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3269. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–10277 Filed 5–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 30, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: A Study of the Effectiveness of a School Improvement Intervention.

Frequency: Semi-annually; annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 6,995.

Burden Hours: 6,581.

Abstract: This randomized control trial study will examine the effectiveness of Success in Sight (SiS) in 52 elementary schools with low to moderate student achievement. This study will specifically examine the impact of SiS on student achievement and on school practices associated with school improvement. The primary data collection will include a teacher survey assessing school improvement practices (data-based decision-making, practices associated with improved student achievement, shared leadership, and purposeful community) and student achievement data. Data collection will occur over a two-year period. Hierarchical Linear Modeling (HLM) will be used to determine the effects of SiS on school-level student achievement and school-level reform practices.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3361. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–10278 Filed 5–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 30, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Migrant Student Information Exchange (MSIX).

Frequency: Weekly; Nightly Database Sub.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,885

Burden Hours: 452,470

Abstract: The collection is necessary to establish a set of minimum data elements to be collected and transferred between State migrant education programs (MEPs) as part of a larger, mandated Migrant Student Information Exchange (MSIX). State educational agencies with MEPs will transfer the minimum data elements using the MSIX in order to facilitate timely class placement, credit accrual and other needed services for migratory children.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2841. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–10279 Filed 5–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 29, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 23, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Assurances for the Protection and Advocacy for Assistive Technology (PAAT) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 9.

Abstract: This information collection instrument will be used by grantees to request funds to carry out the PAAT program. PAAT is mandated by the Assistive Technology Act of 1998, to provide protection and advocacy services to individuals with disabilities for the purposes of assisting in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3293. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–10294 Filed 5–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the form EIA–914, ''Monthly Natural Gas Production Report'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

DATES: Comments must be filed by June 29, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Paul Balserak, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by Fax at 202–395–7285 or e-mail to *Paul_Balserak@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–0801) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–914, ''Monthly Natural Gas Production Report''.
2. Energy Information Administration.
3. OMB Number 1905–0205.
4. Three-year extension.
5. Mandatory.
6. The purpose of the survey is to collect monthly data on the production of natural gas in seven geographical areas (Texas (including State offshore), Louisiana (including State offshore), Oklahoma, New Mexico, Wyoming, Federal Gulf of Mexico offshore and Other States (defined as all remaining states, except Alaska, in which the operator produced natural gas during the report month). Data will be used to monitor natural gas supplies. Survey respondents would be a sample of well operators.
7. Business or other for-profit.
8. 7,920 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, May 23, 2007.

Nancy J. Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E7–10295 Filed 5–29–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0400; FRL–8132–2]

4-Aminopyridine Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's ecological risk

assessments, and related documents for the pesticide 4-aminpyridine, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for 4-aminopyridine through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: July 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0400, by one of the following methods:

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

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

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0400. 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 Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8090; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

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

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

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its environmental fate and effects risk assessment and related documents for 4-aminopyridine and soliciting public comment on risk management ideas or proposals. 4-aminopyridine is an

avicide used to control nuisance birds. EPA developed the risk assessments and risk characterization for 4-aminopyridine through a modified version of its public process for making pesticide reregistration eligibility decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

4-aminopyridine is a restricted use avicide with flock alarming properties that controls nuisance birds. When consumed by birds, baits containing 4-aminopyridine elicit alarm and distress reactions among target species. Individual birds that consume the treated bait will react by flapping their wings erratically and issuing audible distress calls which, depending on the reactivity of the species, is supposed to frighten away the remainder of the flock. Reactions of individual birds are expected to vary by species, as will the reaction of the flock to a distressed member. 4-aminopyridine is registered for use on crows, pigeons, grackles, starlings, cowbirds, gulls, and house sparrows, and certain blackbird species in and around structures, feed lots, airports, land fill sites, and in California for protecting vineyards and sprouting agricultural seeds.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for 4-aminopyridine. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as non-target incident information or use rate information, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for 4-aminopyridine. Risks of concern associated with the use of 4-aminopyridine are: Acute risk to birds, and potential risk to secondary predators feeding on affected species. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to 4-aminopyridine, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For 4-aminopyridine, a modified, 4-Phase process with one comment period seems appropriate in view of its limited use and small number of users. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for 4-aminopyridine. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 22, 2007.

Margaret J. Rice,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–10228 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0203; FRL–8130–1]

Ethylene Oxide; Revised Risk Assessments, Notice of Availability and Solicitation of Risk Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the fumigant/sterilant pesticide ethylene oxide (ETO). In addition, this notice solicits public comment on risk reduction options to protect ETO workers and a revised alternatives assessment. The Agency is having this second Phase–5 to focus on ETO's risks to workers under FIFRA. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for ETO through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: July 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0203, by one of the following methods:

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

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

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0203. 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 Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Susan Bartow, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8005; e-mail address: *bartow.susan@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

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

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

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on August 3, 2005, (70 FR 44632) (FRL–7729–2); a response to comments; and related documents for ETO. EPA also is soliciting public comment on risk reduction options for ETO relating to workers risks revised alternatives assessment for identified risks of concern. EPA developed the risk assessments for ETO as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

ETO is a fumigant/sterilant used to sterilize medical or laboratory equipment, pharmaceuticals, aseptic packaging, musical instruments, and beekeeping equipment or to reduce microbial load on cosmetics, whole and ground spices or other seasoning materials, and artifacts, archival material or library objects.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposalsor occupational issues or otherwise comment on risk management for ETO. Risks of concern associated with the use of ETO are as follows: The Agency's occupational exposure assessment for ETO's use as a sterilant indicates that cancer risks are of concern at the current regulatory levels established by the Occupational Safety

and Health Administration (OSHA) and recommended by the National Institute of Occupational Safety and Health (NIOSH). Non-cancer worker exposure/risk is estimated to be of concern at the OSHA permissible exposure limit (PEL), but not of concern at the NIOSH recommended exposure limit (REL). Based on available data, the Agency anticipates the following activities to result in potential worker exposure to ETO: Inhalation exposure to ETO during sterilization activities; dermal exposure to ethylene glycol and the halohydrins during post-sterilization activities; and inhalation exposure to off-gassed ETO from treated items during post-sterilization activities. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures. A revised paper outlining various ETO alternatives is also included as a separate document in the ETO docket EPA–HQ–OPP–2005–0203. The Agency is interested in information related to these alternatives.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ETO is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for ETO. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the ETO RED.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 16, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–10341 Filed 5–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0306; FRL–8131–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: July 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0306, by one of the following methods:

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

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

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0306. 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 Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

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

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

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

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

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

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

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

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

Application Form

File Symbol: 67979-O. *Applicant*: Syngenta Seeds, Inc. *Product name*: VipCot. Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* Vip3Aa19 protein and the genetic material necessary for its production (vector pNOV3001) and *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production (vector pNOV4641) in event COT102 x COT67B cotton. *Proposal classification/Use*: For use on cotton. (A. Reynolds).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 15, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–10230 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8319–5]

Public Water System Supervision Program Revisions for the State of Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Indiana is revising its approved Public Water System Supervision Program. Indiana has revised the following rules: Arsenic, Radionuclides, and Long Term 1 Enhanced Surface Water Treatment Rule.

EPA has determined that these revisions by the State are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions to the State of Indiana's Public Water System Supervision Program. Any interested party may request a public hearing. A request for a public hearing must be submitted by June 29, 2007, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by June 29, 2007, EPA Region 5 will hold a public hearing. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on June 29, 2007. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Indiana Department of Environmental Management, Office of Water Quality, Drinking Water Branch, 100 N. Senate Avenue, P.O. BOX 6015, Indianapolis, Indiana 46206–6015, between the hours of 8:30 a.m. and 4 p.m., Monday

through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Alicia Brown, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–4443, or at *Brown.Alicia@epa.gov.*

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 3006–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: May 18, 2007.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E7–10339 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 21, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 29, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123 or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B. Herman@fcc.gov*, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., DC 20554 or an e-mail to PRA@fcc.gov. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1003.

Title: Communications Disaster Information Reporting System (DIRS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions, Federal Government, and state, local or tribal government.

Number of Respondents: 5,300 respondents; 5,300 responses.

Estimated Time Per Response: .1–.50 hours.

Frequency of Response: On occasion reporting requirement and other—as needed to update critical infrastructure and key resources.

Obligation to Respond: Voluntary.

Total Annual Burden: 3,710 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission agrees with the comments received from AT&T, Verizon, Wireless, and T-Mobile that it is consistent with the primary objective of the DIRS to treat filings as confidential. The Commission will work with commenters and other respondents to ensure that their concerns regarding the confidentiality of DIRS filings are resolved in a manner consistent with the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission has revised the number of respondents/responses and burden hours since this was last submitted to OMB. For this submission to OMB, the Commission has changed this information collection from a telephone call that the Commission made to key communications providers to a Disaster Information Reporting System (DIRS) database in which wireless, wireline, broadcast, cable and satellite companies will voluntarily enter emergency contact information. In the event of an actual emergency, respondents may also enter infrastructure and network status and damage information and/or requests for resources into the DIRS database. Also in the event of an emergency, Commission staff may contact those companies.

The Commission needs to revise this information collection in order to perform its homeland security and public safety functions as required by the Communications Act of 1934, as amended, as well as to coordinate DIRS data with the Department of Homeland Security (DHS) and its component National Communications System (NCS) in support of NCS's role as the primary agency for Emergency Support Function-2 (ESF–2) (Communications) of the National Response Plan (NRP).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10345 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 23, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 30, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1—C823, 445 12th Street, SW., Washington, DC 20554 and to Jasmeet Seehra, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jasmeet_K._Seehra@omb.eop.gov* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to PRA@fcc.gov or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 13,049.

Estimated Time per Response: 0.5 to 18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1590(d) states the data required by paragraphs (b) and (c) of this section, together with a description of the equipment and procedure used in making the measurements, signed and dated by the qualified person(s) making the measurements, must be kept on file at the transmitter or remote control point for a period of two years, and on request must be made available during that time to duly authorized representatives of the FCC.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10346 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval

May 22, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 29, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at (202) 395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC.

If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions.

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 270.

Estimated Time per Response: 0.25 to 20 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 9,880 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 302 of the 1996 Telecommunications Act provides for specific entry options for telephone companies wishing to enter the video programming marketplace, one option being to provide cable service over an ''open video system'' (''OVS'').

47 CFR 76.1502(a) states an operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

(b) Certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate.

(c) Certifications must be filed on FCC Form 1275 and must include:

(1) The applicant's name, address and telephone number;

(2) A statement of ownership, including all affiliated entities;

(3) If the applicant is a cable operator applying for certification in its cable franchise area, a statement that the applicant is qualified to operate an open video system under Section 76.1501.

(4) A statement that the applicant agrees to comply and to remain in compliance with each of the Commission's regulations in §§ 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513;

(5) If the applicant is required under 47 CFR 64.903(a) of this chapter to file a cost allocation manual, a statement that the applicant will file changes to its manual at least 60 days before the commencement of service;

(6) A list of the names of the anticipated local communities to be served upon completion of the system;

(7) The anticipated amount and type (*i.e.*, analog or digital) of capacity (for switched digital systems, the anticipated number of available channel input ports); and

(8) A statement that the applicant will comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers.

(d)(1) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission's requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least 3 days prior to the filing of the FCC Form 1275 with the Commission.

(2) Parties are required to attach a cover sheet to the filing indicating that the submission is an open video system certification application. The only wording on this cover sheet shall be ''Open Video System Certification Application'' and ''Attention: Media Bureau.'' This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words ''open video systems'' on their mailing envelope.

(e)(1) Comments or oppositions to a certification must be filed within five calendar days of the Commission's receipt of the certification and must be served on the party that filed the certification. If, after making the necessary calculations, the due date for filing comments falls on a holiday, comments shall be filed on the next business day before noon, unless the nearest business day precedes the fifth calendar day following a filing, in which case the comments will be due on the preceding business day. For example, if the fifth day falls on a Saturday, then the filing would be due on that preceding Friday. However, if the fifth day falls on Sunday, then the filing will be due on the next day, Monday, before noon (or Tuesday, before noon if the Monday is a holiday).

(2) Parties wishing to respond to a FCC Form 1275 filing must submit comments or oppositions with the Office of the Secretary and the Bureau Chief, Media Bureau. Comments will not be considered properly filed unless filed with both of these Offices. Parties are required to attach a cover sheet to the filing indicating that the submission is a pleading related to an open video system application, the only wording on this cover sheet shall be ''Open Video System Certification Application Comments.'' This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words ''open video systems'' on their mailing envelopes.

(f) If the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate. The Commission will consider any revised or refiled FCC Form 1275 to be a new proceeding and any party who filed comments regarding the original FCC Form 1275 will have to refile their original comments if they think such comments should be considered in the subsequent proceeding.

47 CFR 76.1503(b)(1) states an open video system operator shall file with the Secretary of the Federal Communications Commission a ''Notice of Intent'' to establish an open video system, which the Commission will release in a Public Notice. Parties are required to attach a cover sheet to the filing indicating that the submission is an Open Video System Notice of Intent. The only wording on this cover sheet shall be ''Open Video System Notice of Intent'' and ''Attention: Media Bureau.'' This wording shall be located in the center of the page and should be in letters at least ½ inch in size. Parties shall also include the words ''open video systems'' on their mailing envelopes. Parties must submit copies of the Notice of Intent with the Office of the Secretary and the Bureau Chief, Media Bureau. The Notice of Intent shall include the following information:

(i) A heading clearly indicating that the document is a Notice of Intent to establish an open video system;

(ii) The name, address and telephone number of the open video system operator;

(iii) A description of the system's projected service area;

(iv) A description of the system's projected channel capacity, in terms of analog, digital and other type(s) of capacity upon activation of the system;

(v) A description of the steps a potential video programming provider must follow to seek carriage on the open video system, including the name, address and telephone number of a person to contact for further information;

(vi) The starting and ending dates of the initial enrollment period for video programming providers;

(vii) The process for allocating the system's channel capacity, in the event that demand for carriage on the system exceeds the system's capacity; and

(viii) A certification that the operator has complied with all relevant notification requirements under the Commission's open video system regulations concerning must-carry and retransmission consent (§ 76.1506), including a list of all local commercial and non-commercial television stations served, and a certificate of service showing that the Notice of Intent has been served on all local cable franchising authorities entitled to establish requirements concerning the designation of channels for public, educational and governmental use.

(2) Information. An open video system operator shall provide the following information to a video programming provider within five business days of receiving a written request from the provider, unless otherwise included in the Notice of Intent:

(i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;

(ii) A preliminary carriage rate estimate;

(iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;

(iv) Technical information that is reasonably necessary for potential video

programming providers to assess whether to seek capacity on the open video system, including what type of customer premises equipment subscribers will need to receive service;

(v) Any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system; and

(vi) The equipment available to facilitate the carriage of unaffiliated video programming and the electronic form(s) that will be accepted for processing and subsequent transmission through the system.

47 CFR 76.1504(d) states complaints regarding rates shall be limited to video programming providers that have sought carriage on the open video system. If a video programming provider files a complaint against an open video system operator meeting the above just and reasonable rate presumption, the burden of proof will rest with the complainant. If a complaint is filed against an open video system operator that does not meet the just and reasonable rate presumption, the open video system operator will bear the burden of proof to demonstrate, using the principles set forth below, that the carriage rates subject to the complaint are just and reasonable.

47 CFR 76.1506(l)(2) states must-carry/retransmission consent election notifications shall be sent to the open video system operator. An open video system operator shall make all must-carry/retransmission consent election notifications received available to the appropriate programming providers on its system.

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

(4) An open video system commencing new operations shall notify all local commercial and noncommercial broadcast stations as required under paragraph (l) of this section on or before the date on which it files with the Commission its Notice of Intent to establish an open video system.

47 CFR 76.1508(c) states any provision of § 76.94 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.94 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

47 CFR 76.1509(c) states any provision of § 76.155 that refers to a ''cable system operator'' or ''cable television system operator'' shall apply to an open video system operator. Any provision of § 76.155 that refers to a ''cable system'' or ''cable television system'' shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10347 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Requirement(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 22, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 30, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at (202) 395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1100.

Title: Section 15.117, Broadcast Receivers.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,000 respondents; 100,000 responses.

Estimated Time Per Response: 0.25 hours (15 minutes).

Frequency of Response: One time reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 25,000 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the

collection of personal identifiable information (PII) from individuals.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission adopted on April 25, 2007, a Second Report and Order, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket 03–15, FCC 07–69. The DTV Act amended 47 U.S.C. Section 309(j)(14)(A) to establish a final date of February 17, 2009 set by Congress for the transition from analog to digital television service by full power television broadcasters. In a continuing effort to inform consumers of this impending deadline, the Commission will require sellers at the point-of-sale to alert consumers about analog-only televisions. Analog-only television equipment will not be able to receive an over-the-air broadcast signal unless they get a digital TV or a box to convert the digital signals to analog or subscribe to pay TV service after February 17, 2009. To further protect consumers, the Commission established 47 CFR 15.117(i) which prohibits the manufacture or import of television receivers that do not contain a digital tuner after March 1, 2007. Because the rule does not prohibit sale of analog-only television equipment from inventory, the Commission decided it is necessary to require retailers and other sellers who choose to continue selling analog-only television equipment to display a sign or label disclosing the limitations of analog-only equipment after February 17, 2009. Therefore, the Commission adopted on April 25, 2007, a Second Report and Order, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket 03–15, FCC 07–69. This rulemaking established 47 CFR 15.117(k) which became effective on May 25, 2007.

47 CFR 15.117(k) states that any person that displays or offers for sale or rent television receiving equipment that is not capable of receiving, decoding and tuning digital signals that the seller must place conspicuously and in close proximity to the television broadcast receivers a sign containing, in clear and conspicuous print, the Consumer Alert Disclosure. The text should be in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label. The information may be printed on a transparent material and affixed to the screen, if the receiver includes a display, in a manner that is removable by the consumer and does not obscure the picture, or, if the receiver does not include a display, in a prominent location on the device, such as on the top or front of the device, when displayed for sale, or the information in this format may be displayed separately immediately adjacent to each television broadcast receiver offered for sale and clearly associated with the analog-only model to which it pertains. This requirement would also apply to persons who offer for sale or television broadcast receivers via direct mail, catalog, or electronic means.

The Consumer Alert Disclosure must contain the following text: This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's digital television Web site at: *http://www.dtv.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10348 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 23, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 30, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith_B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith_B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Nos.: FCC Forms 499–A and 499–Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,625 respondents; 17,465 responses.

Estimated Time Per Response: 10–25 hours.

Frequency of Response: On occasion, quarterly, annual, and one-time reporting requirements, recordkeeping requirement, third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 263,230 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission will allow respondents to certify that data contained in their submission are privileged or

confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the Worksheet. If the Commission receives a request for or proposes to disclose the information, the respondent would be required to make the full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission.

Needs and Uses: The Commission will submit this extension (no change in the reporting requirements, recordkeeping requirements, or third party disclosure requirements) to the OMB after this 60-day comment period to obtain the full three-year clearance from them.

The Federal Communications Commission (Commission) requires telecommunications carriers and other providers of telecommunications to contribute to the Universal Service Fund (USF) and other funds. Contribution revenue data, as well as other information, are reported by carriers and other providers of telecommunications on FCC Forms 499–A and 499–Q. Accompanying these forms are instructions on how to report revenue. This extension is necessary to keep the OMB approval from lapsing and will go into effect with the November 1, 2007 quarterly filing of FCC Form 499–Q.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–10350 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday May 31, 2007

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, May 31, 2007, which is scheduled to commence at in Room TW-C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Public Safety & Homeland Security	*Title:* Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (EB Docket No. 06–119, WC Docket No. 06–63). *Summary:* The Commission will consider an Order concerning recommendations submitted by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks.
2	Public Safety & Homeland Security	*Title:* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102); Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers (WC Docket No. 05–196). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning wireless Enhanced 911 location accuracy and automatic location identification for interconnected Voice over Internet Protocol (VoIP) services.
3	Public Safety & Homeland Security	*Title:* Review of the Emergency Alert Systems (EB Docket No. 04–296); Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief. *Summary:* The Commission will consider a Second Report and Order concerning the promotion of Next Generation EAS.
4	Consumer & Governmental Affairs	*Title:* IP-Enabled Services (WC Docket No. 04–36); Implementation of Sections 255 and 251 (a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities (WT Docket No. 96–198); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123). *Summary:* The Commission will consider a Report and Order regarding revisions to its disability access rules under section 255 and to its Telecommunications Relay Services rules under section 225 of the Communications Act of 1934 to interconnected Voice over Internet Protocol providers.
5	Media and Wireline Competition	*Title:* Telecommunications Services Inside Wiring Customer Premises Equipment (CS Docket No. 95–184); Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring (MM Docket No. 92–260); and Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop (WC Docket No. 01–338). *Summary:* The Commission will consider a Report and Order and Declaratory Ruling defining physically inaccessible cable wiring as well as requesting carrier rights to access inside wire subloops in multiunit premises.
6	Media	*Title:* Amendment to Broadcast Carriage Rules for Cable Operators and Satellite Carriers; 47 CFR 76.56, 76.59, and 76.66. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning market modifications for purpose of satellite and cable carriage of television broadcast stations.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as

early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 07–2685 Filed 5–25–07; 11:20 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collections: Application for Consent to Exercise Trust Powers (3064–0025); Asset Securitization (3064–0137); and Insurance Sales Consumer Protections (3064–0140). These collections of information are described below.

DATES: Comments must be submitted on or before June 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- E-mail: *comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- Mail: Steve Hanft (202–898–3907), Clearance Officer, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the 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.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft (address above).

SUPPLEMENTARY INFORMATION:

1. *Title:* Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: FDIC 6200/09.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks wishing to exercise trust powers.

Estimated Number of Respondents: 18.

Estimated Time per Response for Eligible Depository Institutions: 8 hours.

Estimated Time per Response for Institutions that do not Qualify as Eligible Institutions: 24 hours.

Total Annual Burden: 208 hours.

General Description of Collection: FDIC regulations (12 CFR 333.2) prohibit any insured state nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. Applicants use form FDIC 6200/09 to obtain FDIC's consent.

2. *Title:* Interagency Guidance on Asset Securitization Activities.

OMB Number: 3064–0137.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks involved in asset securitization activities.

Estimated Number of Responses: 20.

Estimated Time per Response: 7.45 hours.

Total Annual Burden: 149 hours.

General Description of Collection: This collection applies to institutions engaged in asset securitization and consists in recordkeeping requirements associated with developing or upgrading a written asset securitization policy, documenting fair value of retained interests, and a management information system to monitor securitization activities. Bank managements use this information as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities. The FDIC uses the information to evaluate the quality of an institution's risk management practices, and to assist institutions without proper internal supervision of their asset securitization activities to implement corrective action to conduct these activities in a safe and sound manner.

3. *Title:* Consumer Protections for Depository Institution Sales of Insurance.

OMB Number: 3064–0140.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks that sell insurance products; persons who sell insurance products in or on behalf of insured state nonmember banks.

Estimated Number of Respondents: 3,740.

Estimated Time per Response: 5 hours.

Total Annual Burden: 18,700 hours.

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.*, that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Request for Comment

Comments are invited on: (a) Whether these collections of information are

necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs, and costs of operation, maintenance and purchase of services to provide the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 23rd day of May, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–10292 Filed 5–29–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2007–12]

Filing Dates for the Massachusetts Special Election in the 5th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Massachusetts has scheduled elections on September 4, 2007, and October 16, 2007, to fill the U.S. House of Representatives seat in the Fifth Congressional District vacated by Representative Martin T. Meehan.

Committees required to file reports in connection with the Special Primary Election on September 4, 2007, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on October 16, 2007, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Massachusetts Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on August 23, 2007; a 12-day Pre-General Report on October 4, 2007; and a 30-day Post-General Report on November 15, 2007. (See chart below for the closing date for each report).

All principal campaign committees of candidates participating only in the Special Primary Election shall file a 12-day Pre-Primary Report on August 23, 2007. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2007 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Massachusetts Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Massachusetts Special Primary or Special General Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

Federal Election Commission electioneering communications rules govern television and radio communications that refer to a clearly identified federal candidate and are distributed within 30 days prior to a special primary election or 60 days prior to a special general election. 11 CFR 100.29. See also 2 U.S.C. 434(f). The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 2 U.S.C. 434(f)(1) and 11 CFR 104.20.

The 30-day electioneering communications period in connection with the Massachusetts Special Primary runs from August 5, 2007, through September 4, 2007. The 60-day electioneering communications period in connection with the Massachusetts Special General runs from August 17, 2007, through October 16, 2007.

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in Only the Special Primary (09/04/07), Must File			
Pre-Primary	08/15/07	08/20/07	08/23/07
October Quarterly	09/30/07	10/15/07	10/15/07
Semiannual Filing Committees Involved in Only the Special Primary (09/04/07), Must File			
Pre-Primary	08/15/07	08/20/07	08/23/07
Year-End	12/31/07	01/31/08	01/31/08
Quarterly Filing Committees Involved in Both the Special Primary (09/04/07) and Special General (10/16/07) Must File			
Pre-Primary	08/15/07	08/20/07	08/23/07
Pre-General	09/26/07	10/01/07	10/04/07
October Quarterly	09/30/07	10/15/07	10/15/07

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Post-General	11/05/07	11/15/07	11/15/07
Year-End	12/31/07	01/31/08	01/31/08
Semiannual Filing Committees Involved In Both The Special Primary (09/04/07) And Special General (10/16/07) Must File			
Pre-Primary	08/15/07	08/20/07	08/23/07
Pre-General	09/26/07	10/01/07	10/04/07
Post-General	11/05/07	11/15/07	11/15/07
Year-End	12/31/07	01/31/08	01/31/08
Quarterly Filing Committees Involved in Only the Special General (10/16/07), Must File			
Pre-General	09/26/07	10/01/07	10/04/07
October Quarterly	09/30/07	10/15/07	10/15/07
Post-General	11/05/07	11/15/07	11/15/07
Year-End	12/31/07	01/31/08	01/31/08
Semiannual Filing Committees Involved in Only the Special General (10/16/07), Must File			
Pre-General	09/26/07	10/01/07	10/04/07
Post-General	11/05/07	11/15/07	11/15/07
Year-End	12/31/07	01/31/08	01/31/08

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: May 24, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–10322 Filed 5–29–07; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Privacy Act of 1974; Systems of Records

Issued: May 24, 2007.

AGENCY: Federal Maritime Commission.

ACTION: Proposed notice of revised system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Federal Maritime Commission (''Commission'' or ''FMC'') is publishing for comment, a revised system of records that is currently maintained by the Commission. The system of records designated as FMC–7, entitled: ''Licensed Ocean Freight Forwarders File-FMC'', is being revised to: (1) Change its title; (2) clarify the location of the system; (3) clarify the categories of individuals covered by the system; (4) expand the list of categories of records in the system; (5) expand the list of routine uses of records maintained in the system; and (6) expand the list of record source categories.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than June 30, 2007. These revisions will become effective on July 9, 2007, unless the Commission receives comments that would result in a contrary determination.

ADDRESSES: Comments may be submitted to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, e-mail: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, e-mail: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, the FMC proposes to revise the system of records designated as FMC–7 (Licensed Ocean Freight Forwarders File-FMC) by changing the system name to ''Licensed Ocean Transportation Intermediaries Files (Form FMC–18)'' and by clarifying that the system is located in the Commission's Bureau of Certification and Licensing. The proposed modifications to the system title and location reflect changes due to statutory amendments under the Ocean Shipping Reform Act of 1998 (Pub. L. 105–258), and Commission organizational changes that have taken place since the last update and publication of this system of records on June 24, 1999. 64 FR 33862. The categories of individuals covered by the system have been clarified to better identify the individuals and titles of corporate applicants. The categories of records in the system have been expanded to include the use of Social Security Numbers (or alternatively, the driver's license numbers, passport numbers or alien registration numbers) of the stockholders, officers, and directors of individual ocean transportation intermediaries (OTIs); corporate organizational documents and business licenses; and the inclusion of surety bond information required by statute with respect to licensed OTIs. This additional information is required for the staff to be able to determine whether or not an applicant, or existing licensee, is qualified for licensing or continues to meet the regulatory requirements of an OTI. Routine uses of the information maintained in the system have been expanded to reflect that the Commission may provide or update information maintained in the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment/International Trade Data System for the purpose of verifying the licensed or registered status of OTIs under the Trade Act of 2002 and for related CBP purposes. Also, a new record source category has been added to show that staff conduct and utilize Internet Web site searches and reviews of selected commercial and government

database searches to access information relevant to processing OTI license applications. This new record source enables the staff to perform a more thorough search of information regarding the qualifications/character of an applicant/licensee.

As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and OMB Circular A–130, Appendix I, the Federal Maritime Commission has submitted a report describing the altered system of records covered by this notice to the Office of Management and Budget and to Congress.

FMC–7

SYSTEM NAME:

Licensed Ocean Transportation Intermediaries Files (Form FMC–18).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals, including sole proprietorships, members of partnerships, and officers and owners of corporate licensees, managers and owners of limited liability companies, ex-licensees, and applicants for licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System contains ocean transportation intermediaries (OTIs) names, addresses and taxpayer identification numbers (which may be the Social Security Numbers), as well as the names, addresses, and Social Security Numbers (or alternatively, driver's license numbers, passport numbers or alien registration numbers) of the stockholders, officers, and directors of individual OTIs; descriptions of the relationships the OTI may have with other business entities; corporate organizational documents and business licenses; a record of the OTI's past experience in providing or procuring ocean transportation services; surety bond information with respect to licensed OTIs; and any financial information and/or criminal convictions pertinent to the licensing of the OTIs. Under the Shipping Act of 1984, as amended, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier or both.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17 and 19, Shipping Act of 1984 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in these records may be disclosed as follows:

1. By Commission staff for evaluation of applicants for licensing.

2. By Commission staff for monitoring the activities of licensees to ensure they are in compliance with Commission regulations.

3. To refer, where there is an indication of a violation or potential violation of law whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulations, or orders issued pursuant thereto.

4. To request from a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the issuance of a license.

5. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee previously employed by a licensee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

6. To provide or update information maintained in the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment/International Trade Data System (ACE/ITDS) to verify licensed or registered status of OTIs under Trade Act of 2002 and related CBP requirements, or any other successor agency or organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in a personal computer on-site at Commission headquarters.

RETRIEVABILITY:

Records are indexed by name and license or organization number.

SAFEGUARDS:

Records are maintained in an area of restricted accessibility.

RETENTION AND DISPOSAL:

Applicant and licensee files are kept as long as the application and/or license is active. Files for withdrawn and denied applicants, and revoked licenses remain in the Record Location Center ten years after final action. After ten years the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Request may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

1. Information submitted by applicants and licensees.

2. Information submitted by Commission Area Representatives.

3. Information submitted by the general public (*e.g.*, through complaints).

4. Information submitted by surety companies.

5. Information obtained through Internet Web site searches and selected commercial and government database searches conducted by Bureau of Certification and Licensing staff in processing OTI license applications (*e.g.*, Choicepoint and Dun & Bradstreet).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from

the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–10381 Filed 5–29–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 2007.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Doral Holdings Delaware, LLC, Doral Holdings, LP, and Doral GP Ltd., all of New York, New York; to become bank holding companies by acquiring up to 100 percent of the voting shares of Doral Financial Corporation, and Doral Bank, both of San Juan, Puerto Rico.

In connection with this application, Applicant also has applied to acquire Doral Bank, FSB, New York, New York, 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, May 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–10319 Filed 5–29–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6060–N]

RIN 0938–AN71

HIPAA Administrative Simplification: National Plan and Provider Enumeration System Data Dissemination

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice establishes the data that are available from the National Plan and Provider Enumeration System (NPPES). In addition, this notice addresses who may have access to the data or may receive data from the system, the processes for requesting and receiving data, and the conditions under which data may be disclosed.

FOR FURTHER INFORMATION CONTACT: Patricia Peyton, (410) 786–1812.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory Background

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the Secretary of Health and Human Services (HHS) to adopt a standard unique health identifier for health care providers. On January 23, 2004, HHS published a final rule in the **Federal Register** that adopted the National Provider Identifier (NPI) as the standard unique health identifier for health care providers (69 FR 3434). The NPI final rule established the National Provider System (NPS) and requires, among other things, that the NPS disseminate data in response to approved requests. The NPI final rule stated that we would publish a notice in the **Federal Register** describing our data dissemination strategy and the process by which we would carry it out (69 FR 3456). Therefore, we are publishing this notice.

B. Operational and System Background

On July 28, 1998, in accordance with the Privacy Act of 1974, we published, in the **Federal Register**, a System of Records (SOR) notice for the National Provider System (NPS) (63 FR 40297). The NPS is the system, as described in the NPI final rule, that will be used to enumerate health care providers and house the information provided on health care providers' applications for NPIs. The NPS is now contained within the National Plan and Provider Enumeration System (NPPES). We are in the process of revising the Privacy Act SOR notice and will soon publish an updated SOR notice. The updated SOR notice will reflect the change from NPS to NPPES and will incorporate other changes necessitated by organizational and name changes and information contained in the NPI final rule. The updated SOR notice will also contain language that will clarify its consistency with the data dissemination policy described in this notice. (The existing SOR notice, although it is being revised, supports the data dissemination policy described in this notice.) The NPPES enumerates health care providers and houses their NPIs and information from their NPI applications/updates. The NPPES also would be capable of enumerating health plans and housing their standard unique health identifiers and information from their health plan identifier applications/updates once a standard unique health identifier for health plans has been adopted.

Covered entities under HIPAA are required to use NPIs to identify health care providers in standard transactions beginning no later than May 23, 2007 (small health plans have until May 23, 2008). (See the Standards for Electronic Transactions and Code Sets final rule published on August 17, 2000 (65 FR 50312), the Modifications to the Electronic Transaction and Code Sets final rule published on February 20, 2003 (68 FR 8381), and the NPI final rule published on January 23, 2004 (69 FR 3434)). Covered entities include health plans, health care clearinghouses, and those health care providers who transmit any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard.

The NPPES uniquely identifies health care providers by the use of an

application process and assigns them their NPIs. The NPPES creates a record for each health care provider to whom it assigns an NPI. The records are updated when health care providers furnish updates to the NPPES.

Health care providers are categorized by the NPPES as two types: Individuals, such as physicians; and organizations, such as hospitals.

A health care provider may apply for an NPI in one of three ways: (1) By completing form CMS–10114 (NPI Application/Update Form) and mailing it to the NPI Enumerator; (2) by applying online at *https://NPPES.cms.hhs.gov/;* or (3) by having an approved organization submit its NPI application data, along with the NPI application data of many other health care providers, to the NPPES in an electronic format defined by HHS. (The NPI Application/Update Form, CMS–10114, is approved under the Paperwork Reduction Act as OMB No. 0938–0931 with an expiration date of February 29, 2008.)

Health care providers who apply online have electronic access to the information in their own NPPES records by using user identifiers and passwords they select. This access allows those health care providers to submit updates to their NPPES data electronically via the Web.

Health care providers who apply on the paper form may update their NPPES data electronically by using user identifiers and passwords they select. However, health care providers who are individuals and who submit paper applications but did not furnish SSNs in their applications must update their NPPES data by using the paper NPI Application/Update Form.

A health care provider may have its NPI application data submitted by a HHS-approved organization if the organization offers this service and the health care provider gives permission for the NPI application data to be submitted by the organization. An organization, once it is approved to do so, submits to the NPPES the health care provider's NPI application data, along with the NPI application data of many other health care providers who have also agreed to this service. The NPI application data are submitted to the NPPES for enumeration electronically in a format defined by HHS. The NPPES processes the NPI application data and makes available to the organization the NPIs that were assigned to the health care providers. If NPIs were not assigned to all of the health care providers, HHS indicates to the organization why NPIs were not assigned. This process is known as electronic file interchange (EFI) for bulk enumeration. Information about EFI can be found at *http://www.cms.hhs.gov/NationalProvIdentStand/.* Health care providers who are assigned NPIs via this process may update their own NPPES data electronically via the Web using user identifiers and passwords they select. The approved organizations may offer to submit updates to the health care providers' NPPES data on behalf of the health care providers, and may do so if the health care providers agree. The updates are sent to the NPPES in an electronic format defined by HHS. Information on the format of EFI files is available at *https://NPPES.cms.hhs.gov.* The EFI process became available on May 1, 2006.

II. How to Obtain NPI(s) and Other NPPES Data of Enumerated Health Care Providers

A. Request the NPIs From the Health Care Providers

Entities wishing to obtain the NPI of a health care provider for use in a standard transaction(s) may contact that health care provider directly and request the NPI. Health care providers who are covered entities under HIPAA (known as ''covered health care providers'') are required by the NPI final rule to disclose their NPIs to any entity that needs them for use in standard transactions (45 CFR 162.410(a)(3)). Covered organization health care providers that have subparts that have been assigned NPIs must ensure that those subparts disclose their NPIs as well (45 CFR 162.410(a)(6)). Because the NPI was adopted for use in standard transactions, enumerated health care providers who are not covered health care providers are expected, but not required, to disclose their NPIs, upon request, to any entity that needs them for use in standard transactions.

B. Request the NPIs and Other NPPES Health Care Provider Data From HHS

In accordance with the Freedom of Information Act (FOIA), the Privacy Act, and the CMS FOIA and Privacy Act procedures, HHS has reviewed the health care provider data elements contained in the NPPES, which are listed in the NPI final rule (69 FR 3457 through 3460). As a result of this review, HHS believes that Social Security Numbers (SSNs), Internal Revenue Service Individual Taxpayer Identification Numbers (IRS ITINs), and dates of birth (DOB) are not disclosable under FOIA and, therefore, HHS will not release these three data elements to the public, which includes HIPAA covered entities. This decision supports HHS and CMS efforts to prevent or minimize fraud and abuse in the Medicare and Medicaid programs and in the health care industry in general. HHS has determined that the remaining health care provider data elements contained in the NPPES, which are listed in the table below, are required to be disclosed under the FOIA. HHS believes that the data elements in the table below are sufficient to enable HIPAA covered entities to match health care provider records in NPPES with the health care providers for whom they have data.

Anyone may request NPIs and other NPPES health care provider data from HHS under the FOIA.

The NPPES data elements that HHS has determined are required to be disclosed under the FOIA are listed below. They are defined in the NPI final rule.

NPPES HEALTH CARE PROVIDER DATA THAT MAY BE DISCLOSED UNDER FOIA

For health care providers who are individuals	For health care providers who are organizations
NPI (This is the provider's NPI. If the provider has had an NPI replaced, this will be the same NPI as the Replacement NPI.).	NPI (This is the provider's NPI. If the provider has had an NPI replaced, this will be the same NPI as the Replacement NPI.)
Entity Type Code: 1=Individual	Entity Type Code: 2=Organization
Replacement NPI (This is the provider's NPI if the provider has been assigned a Replacement NPI. If the provider has never been assigned a Replacement NPI, this data element will be blank.).	Replacement NPI (This is the provider's NPI if the provider has been assigned a Replacement NPI. If the provider has never been assigned a Replacement NPI, this data element will be blank.)
Provider Last Name (Legal Name)	Employer Identification Number (EIN).
Provider First Name	Provider Organization Name (Legal Business Name).

NPPES HEALTH CARE PROVIDER DATA THAT MAY BE DISCLOSED UNDER FOIA—Continued

For health care providers who are individuals	For health care providers who are organizations
Provider Middle Name	
Provider Other Last Name	Provider Other Organization Name.
Provider Other Last Name Type Code:	Provider Other Organization Name Type Code:
1=Former Name	3=Doing Business As Name.
2=Professional name	4=Former Legal Business Name.
5=Other	5=Other.
Provider Other First Name	
Provider Other Middle Name	
Provider Name Prefix Text	
Provider Name Suffix Text	
Provider Credential Text	
Provider First Line Business Mailing Address	Provider First Line Business Mailing Address.
Provider Second Line Business Mailing Address	Provider Second Line Business Mailing Address.
Provider Business Mailing Address City Name	Provider Business Mailing Address City Name.
Provider Business Mailing Address State Name	Provider Business Mailing Address State Name.
Provider Business Mailing Address Postal Code	Provider Business Mailing Address Postal Code.
Provider Business Mailing Address Country Code (If outside U.S.)	Provider Business Mailing Address Country Code (If outside U.S.).
Provider Business Mailing Address Telephone Number	Provider Business Mailing Address Telephone Number.
Provider Business Mailing Address Fax Number	Provider Business Mailing Address Fax Number.
Provider First Line Business Location Address	Provider First Line Business Location Address.
Provider Second Line Business Location Address	Provider Second Line Business Location Address.
Provider Business Location Address City Name	Provider Business Location Address City Name.
Provider Business Location Address State Name	Provider Business Location Address State Name.
Provider Business Location Address Postal Code	Provider Business Location Address Postal Code.
Provider Business Location Address Country Code (If outside U.S.)	Provider Business Location Address Country Code (If outside U.S.).
Provider Business Location Address Telephone Number	Provider Business Location Address Telephone Number.
Provider Business Location Address Fax Number	Provider Business Location Address Fax Number.
Healthcare Provider Taxonomy Code (Primary Taxonomy required; up to 15 may be reported).	Healthcare Provider Taxonomy Code (Primary Taxonomy required; up to 15 may be reported).
Other Provider Identifier	Other Provider Identifier.
Other Provider Identifier Type Code	Other Provider Identifier Type Code.
Provider Enumeration Date	Provider Enumeration Date.
Last Update Date	Last Update Date.
NPI Deactivation Reason Code	NPI Deactivation Reason Code.
NPI Deactivation Date	NPI Deactivation Date.
NPI Reactivation Date	NPI Reactivation Date.
Provider Gender Code	
Provider License Number	
Provider License Number State Code	
	Authorized Official Last Name.
	Authorized Official First Name.
	Authorized Official Middle Name.
	Authorized Official Title or Position.
	Authorized Official Telephone Number.

We anticipate an extraordinary demand from the health care industry for FOIA-disclosable NPPES health care provider data. Because the health care industry needs these data in order to develop linkages between legacy identifiers and NPIs that will be necessary in order to implement the NPI as required by regulation, and because health care providers need to know the NPIs of other health care providers in order to submit HIPAA-compliant health care claims transactions, there is an extreme urgency for HHS to make these data available. In order to efficiently respond, HHS will make NPPES health care provider data available on the Internet. Internet availability eliminates the need for entities to submit initial and ongoing requests for data to HHS and for HHS to process and respond to each of those requests. We believe that making these data available on the Internet is the most efficient and effective means of dissemination.

HHS will make the FOIA-disclosable NPPES health care provider data available in downloadable files and in a query-only database, as described below in items 1 and 2, respectively. Upon publication of this notice, HHS will announce the Internet locations of the downloadable files and the query-only database on the CMS NPI Web page (*http://www.cms.hhs.gov/NationalProvIdentStand/*). At the same time, CMS will communicate that information in its provider listservs and to its business partners and other health care industry associations with whom CMS works on issues related to NPI implementation.

The initial downloadable file and the query-only database will be available 30 days after the publication date of this notice.

We remind health care providers who are covered entities under HIPAA that they are required by the NPI final rule to update their NPPES data within 30 days of the changes, and we encourage other health care providers who have been assigned NPIs to do the same. Further, prior to CMS'' disclosure of NPPES health care provider data, we encourage health care providers who have been assigned NPIs to check the information in their NPPES records to ensure it is current. Some health care providers may wish to delete optional NPPES data that they furnished when applying for their NPIs since the

information provided in these optional fields is not required. For example, the data contained in the ''Other Names'' and ''Other Provider Identifiers'' data fields are optional. Further, a primary ''Healthcare Provider Taxonomy Code'' is required to be furnished when applying for an NPI; however, the reporting of additional ''Healthcare Provider Taxonomy Codes'' (a total of 15 may be reported) is optional.

The HHS NPPES data dissemination policy is as follows:

1. *NPPES health care provider data that are required to be disclosed under the FOIA will be available as a downloadable file on a Web site.*

Section 552(a)(2)(D) of the FOIA requires agencies to make available by electronic means copies of records which have been released to any person under the FOIA and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records. We believe that the demand for NPPES health care provider data will be such that it will justify our making NPPES health care provider data that are required to be disclosed under the FOIA available for download by the public from an Internet Web site. The location of the downloadable file will be announced on the CMS NPI Web page (*http://www.cms.hhs.gov/NationalProvIdentStand/*) prior to its availability. Each month, an update file will also be available for download from the same Web site. The update file will not replace the initial file: The update file will contain only (1) data that are required to be disclosed under FOIA for health care providers who obtained NPIs within the prior month, and (2) updates and changes to the data that are required to be disclosed under the FOIA for enumerated health care providers that were made within the prior month. The first update file will be available for downloading 30 days after the availability of the initial file, and a new update file will be available for downloading each month thereafter.

There will be no charge to download the files.

We may decide to discontinue making these files available if we determine that the query-only database described in (2) below is an adequate replacement.

The NPPES data elements that HHS has determined are required to be disclosed under FOIA and will be contained in the downloadable files are listed in the table above.

2. *NPPES health care provider data that HHS has determined are required to be disclosed under FOIA will be available in a query-only database on an Internet Web site.*

Section 552(a)(2)(D) of the FOIA requires agencies to make available by electronic means copies of records which have been released to any person under the FOIA and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

We believe that the demand for NPPES health care provider data will be such that it will justify our making a query-only database containing NPPES health care provider data that are required to be disclosed under the FOIA available to the public on an Internet Web site. Users will be able to run simple queries online, such as queries by NPI and by name of health care provider.

There will be no charge to use the query-only database.

The NPPES data elements that HHS has determined are required to be disclosed under FOIA and will be available from the query-only database are listed in the table above.

3. *Other requests for NPPES health care provider data that HHS has determined are required to be disclosed under the FOIA.*

Requests for FOIA-disclosable data in formats or in media that are not described above, or any other custom requests, will be considered in accordance with the FOIA and CMS FOIA procedures and charges (see *http://www.cms.hhs.gov/AboutWebsite/04_FOIA.asp*). For example, these could be requests for FOIA-disclosable data for specific health care providers, or for health care providers in certain States or with certain Healthcare Provider Taxonomy Codes, or requests for FOIA-disclosable data on CD, diskette, or paper. These requests must be described in detail and be submitted to the following address: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Freedom of Information Group, Room N2–20–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Requests may be sent by fax to (410) 786–0474. We will not acknowledge, respond to, or honor requests that are made by telephone.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Sections 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by section 262 of Pub. L. 104–191. 42 CFR 162, Subpart D. (Catalog of Federal Domestic Assistance Program, No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 30, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: February 22, 2007.

Michael O. Leavitt

Secretary, Department of Health and Human Services.

[FR Doc. 07–2651 Filed 5–23–07; 4:12 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0208]

Interim Melamine and Melamine Analogues Safety/Risk Assessment; Availability

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled, ''Interim Melamine and Melamine Analogues Safety/Risk Assessment.'' The interim safety/risk assessment describes the risk to human health associated with eating pork, chicken, fish, and eggs from animals that were inadvertently fed animal feed that contained melamine and its analogues (cyanuric acid, ammelide and ammeline). FDA is seeking public comment on the interim safety/risk assessment to assist the agency and the Food Safety and Inspection Service (FSIS) at the U. S. Department of Agriculture (USDA) in the ongoing investigation of contaminated vegetable protein products imported from China that were mislabeled as ''wheat gluten'' and ''rice protein concentrate,'' and ensuring the safety of the U.S. food supply.

DATES: Comments on the interim safety/risk assessment must be submitted by June 29, 2007.

ADDRESSES: Submit written comments 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: P. Michael Bolger, Chief, Risk Assessment Staff, Center for Food Safety and Applied Nutrition (HFS–308), 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1941, FAX 301–436–2632, or e-mail: *Mike.Bolger@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The interim safety/risk assessment was prepared by FDA in collaboration with FSIS and in consultation with the Centers for Disease Control and Prevention, the Environmental Protection Agency, and the Department of Homeland Security. The purpose of the safety/risk assessment is to assist FDA and FSIS in the ongoing investigation of contaminated vegetable protein products imported from China that were mislabeled as ''wheat gluten'' and ''rice protein concentrate,'' and ensuring the safety of the U.S. food supply. The interim safety/risk assessment concludes that, based on currently available data and information, the consumption of even large amounts of pork, chicken, fish, and/or eggs from animals that had been inadvertently fed animal feed contaminated with melamine and its analogues is very unlikely to pose a human health risk. This safety/risk assessment was developed rapidly due to the extremely time-sensitive need to understand the nature of the potential risk. However, we are seeking public comment on this interim safety/risk assessment, and in addition it will undergo expert peer review.

II. Safety/Risk Assessment

A human health safety/risk assessment is a scientifically-based methodology used to estimate risk to human health from exposure to specific compounds such as contaminant(s) in food. The interim melamine and its analogues safety/risk assessment addresses:

(1) The chemical characteristics of melamine and its analogues;

(2) The toxicological profile of melamine and its analogues, including the observed results from controlled animal studies conducted with melamine; and

(3) The likelihood that consumption of pork, chicken, fish and eggs from animals fed feed contaminated with melamine and its analogues poses a health risk to humans.

FDA used the following methodology to develop the safety/risk assessment. The safety/risk assessment was based on the currently available scientific data and information. FDA estimated human exposure to melamine and its analogues based on the estimated levels in specific foods and the estimated consumption of those foods. The agency compared the exposure estimate to a ''Tolerable Daily Intake'' level, which was derived using available toxicity data on the level of melamine that did not cause adverse renal effects in a laboratory-animal (13-week rat) bioassay study. FDA adjusted this level, ''the No Observed Adverse Effect Level'' for uncertainty in the data by dividing by a safety/uncertainty factor of 100 to account for differences in sensitivity within and across species.

Recognizing the time-sensitive need for the safety/risk assessment, FDA invites comments concerning:

(1) The assessment approach used;

(2) The assumptions made;

(3) The data used; and

(4) The transparency and clarity of the report.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

The interim safety/risk assessment is available electronically at *http://www.cfsan.fda.gov/~dms/melamra.html*.

Dated: May 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–2679 Filed 5–25–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its fifty-sixth meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: June 10, 2007, 1 p.m.–5:45 p.m., June 11, 2007, 8:45 a.m.–5 p.m., June 12, 2007, 8:50 a.m.–10:45 a.m.

Place: Fort Collins Hilton, 425 Prospect Road, Fort Collins, CO 80526, *Phone:* 970–482–2626.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, June 10, at 1 p.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley. Jim Wescott, Senior Demographer with Colorado State will be give an overview of Rural Colorado. Following this presentation will be two panels on health and human services issues. The first will be an health panel. The speakers will be Mark Wallace, President of Northern Colorado Health Alliance, and Dr. Jack Westfall, Associate Dean for Rural Health at the Colorado University School of Medicine. The second will be a human services panel. The speakers will be Patricia Brewster-Willeke, a Public Health Nurse, and Kindra Mulch, Administrator of Kit Carson County Health and Human Services. Following the panel discussions will be an overview of Monday's site visits by Lou Ann Wilroy with the Colorado State Office of Rural Health. The Sunday meeting will close at 5:45 p.m.

Monday morning, June 11, at 8:30 a.m., the Committee will break into Subcommittee format for the site visits. At 8:45 a.m., both Subcommittees will depart for site visits. The Health Subcommittee will depart to East Morgan County Hospital in Brush, Colorado. The Human Services Subcommittee will depart to the Area Agency on Aging in Fort Morgan, Colorado. Transportation to these sites will not be provided. Both Subcommittees will return to Fort Collins Hilton and resume meeting in Subcommittee format at 4 p.m. The Monday meeting will close at 5 p.m.

The final session will be convened Tuesday morning, June 12, at 8:50 a.m. A Committee member, Mayor Larry Otis, will present a case study titled Employee Health Care in Rural Mississippi. Following this presentation will be a review of the site visits, discussion on the letter to the Secretary, and discussion of the upcoming September meeting. The meeting will be adjourned at 10:45 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Tom Morris, M.P.A., Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Due to scheduling difficulties, this notice will publish in the **Federal Register** less than 15 days before the date of the meeting.

Dated: May 24, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. 07–2683 Filed 5–25–07; 10:55 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Proposed Collection; Comment Requested; Study to Improve Thyroid Doses from Fallout Exposure in Kazakhstan

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 18, 2007, pages 2286–2287 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Study to improve thyroid doses from fallout exposure in Kazakhstan, Radiation Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute (NCI). This is a dose reconstruction effort. Additional data will be acquired to improve on published estimates of individual internal and external radiation dose and better characterize the underlying dose uncertainties for individuals exposed as children to radioactive fallout from nuclear tests conducted at the Semipalatinsk Nuclear Test Site (SNTS) in Kazakhstan during the 1950s. Village residents near the test site received high doses of internal and external radiation to the thyroid gland (up to 10 Gy for internal and 0.6 Gy for external radiation) as a result of multiple nuclear tests. Internal radiation exposure occurred primarily through consumption of milk and other dairy products from animals grazing on pastures contaminated with radioactive iodine. The external dose received by individuals was a function of the exposure rate when the fallout was deposited, shielding provided by buildings and the number of hours spent outdoors on a daily basis. Collection from small focus groups of persons who were young adults at the time of the nuclear tests of specific information about children's milk consumption and time spent indoors and outdoors, shielding, and pasturing and feeding of dairy animals for the months following the nuclear tests will allow dosimetrists to evaluate and change, as appropriate, the current assumptions and input values for the parameters of the dose estimation model. The new data will allow more objective model assumptions and result in a more informed characterization of uncertainty.

Type of information collection request: NEW. The Kazakhstan population was exposed to high levels of radiation from external as well as internal sources, unlike the vast majority of persons living downwind from the Chernobyl accident who were exposed only to radioactive isotopes of ingested and inhaled iodine. Availability of accurate dose estimates will allow evaluation of the relative biological effectiveness (RBE) of internal vs. external radiation exposures in terms of thyroid disease risk within a single population. The conditions of fallout exposure in Kazakhstan are directly relevant to conditions following a hypothetical nuclear accident or a terrorist attack involving high levels of local fallout.

Need and Use of Information Collection: NCI proposes a small-scale field study to acquire new data to improve published estimates of internal and external radiation doses to individuals exposed to fallout from nuclear tests conducted at the SNTS during 1949–1962. Retrospective information about factors influencing radiation dose to the thyroid gland in children of two distinct ethnic groups (Kazakh and Russian) will be collected using focus group interviews. New data to be collected on milk and milk product consumption, time typically spent outdoors, radiation shielding provided by dwellings and other buildings, and seasonal practices of pasturing and supplemental feeding of dairy animals at the time of the nuclear tests will enable dosimetrists to address key weaknesses in the current dosimetry models. Since the objective is to estimate group-specific mean values (and ranges) and not to collect individual data, focus groups are better suited than conventional in-depth individual interviews. Focus group members will be recruited from among women and men who speak Russian or Kazakh and have a verified history of residence in the village at the time of the nuclear tests. In each village, three groups of 8 women, age 70 or older, who had children or provided care to other children (e.g., younger siblings, nieces and nephews) who were under age 21 at the time of the nuclear tests will be enrolled. In each village, 8 men, age 70 or older, who were engaged in farming and the care of dairy animals at the time of the nuclear tests will be enrolled.

Frequency of Response: Once. *Affected Public:* Individual and household. *Type of Respondent:* Women and men, age 70 or older. *Estimated Number of Respondents:* 128. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* 2.0. *Annual Burden Hours Requested:* 85.3.

TABLE 1.—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Type of respondent	Number of respondents	Frequency of response	Average hours per response	Total hours (3 yr)	Annual hour burden
Focus group					
Kazakhstan villagers (adults) ≥70 yrs old)	128	1	1.9	243	81.1

TABLE 1.—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS—Continued

Type of respondent	Number of respondents	Frequency of response	Average hours per response	Total hours (3 yr)	Annual hour burden
Post-focus group evaluation					
Kazakhstan villagers (adults ≥70 yrs old)	128	1	0.1	13	4.3
Total	128	1	2.0	256	85.3

There are no capital, operating or maintenance costs to report.

Request For Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Kiyohiko Mabuchi, Principal Investigator, National Cancer Institute, Executive Plaza South, Room 7038, MSC 7238, Bethesda, Maryland 20852, or call non-toll free number 301–594–7469 or FAX your request, including your address to 301–402–0207.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this publication.

Dated: May 21, 2007.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–10331 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Fullerene-Based Anticoagulant

Description of Technology: This technology relates to the use of substituted or modified C_{60} fullerenes, which are carbon-based molecular cages that resemble soccer balls, for the prevention or treatment of thrombosis, peripheral arterial occlusion, and catheter obstruction. Described are compositions and methods for administering such compounds at the implantation site of an in-dwelling device and methods of coating in-dwelling devices with such compounds. Such devices include stents, stent grafts, pacemakers, defibrillators, venous valves, heart valves, sutures, catheters, and drug delivery ports.

Applications: Non-invasive method of preventing clot formation.

Market: Anticoagulation therapy averages several billion dollars a year.

Further Research Required: Anti-coagulant properties of C–60 derivatives in vivo; Device coating and in vivo efficacy; Safety evaluation of device, in vivo models.

Inventors: Marina Dobrovolskaia *et al.* (NCI)

Patent Status: PCT Application No. PCT/US2006/041838 filed 25 Oct 2006 (HHS Reference No. E–140–2006/0 PCT–01)

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301/435–4521; *sayyidf@mail.nih.gov*

Aminoalkyl Substituted O^6-Benzylguanine Derivatives as Inactivators of O^6-Alkylguanine-DNA Alkyltransferase and Adjuvants for Chemotherapy

Description of Technology: This present invention describes novel class of compounds that inactivate the DNA repair protein O^6-alkylguanine-DNA alkyltransferase (AGT). Inactivation of this protein improves therapeutic effectiveness of chemotherapy drugs that modify O^6-position of DNA guanine residues.

These new compounds have several advantages over the existing O^6-benzylguanine compounds in terms of being more water soluble, being more potent, and the compounds are more readily formulated in water or phosphate buffered saline solutions than O^6-benzylguanine compounds.

The existing O^6-benzylguanine compounds are currently in Phase II and III clinical trials. The new aminoalkyl substituted O^6-benzylguanine derivatives are currently in preclinical trials.

Applications and Modality: New compounds have potential to improve chemotherapy treatment with anticancer agents; New compounds are more water soluble, more readily formulated and more potent than existing O^6-benzylguanine compounds.

Market: 600,000 deaths from cancer related diseases were estimated in 2006; In 2006, cancer drug sales were estimated to be $25 billion.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Robert C. Moschel (NCI) *et al.*

Relevant Publication: A manuscript directly related to the above technology will be available as soon as it is accepted for publication.

Patent Status: U.S. Patent Application No. 11/683,310 filed 07 Mar 2007 (HHS Reference No. E–307–2004/1–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301/435–5560; *madua@mail.nih.gov*.

Inhibition of ABC Transporters by Transmembrane Domain Analogs

Description of Technology: ABC transporters contain multiple transmembrane domains and are involved in the translocation of a variety of substrates across cell membranes. Upregulation of these transporters contributes to multiple drug resistance in cancer chemotherapy wherein these transporters export chemotherapeutic agents out of cancer cells. The inventors have found that P-glycoprotein and ABCG2 transporter can be effectively inhibited by properly modified peptides corresponding to certain transmembrane domains. This inhibition can be used to overcome drug resistance in resistant tumors.

Applications: Therapeutics that enhance cancer treatments.

Market: Cancer is the second leading cause of death in the United States; 600,000 deaths caused by cancer in 2006; Worldwide incidence of new cancer patients is forecast to increase from 4.2 million cases in the major cancer markets in 2005 to 4.6 million in 2010; Global anticancer market was worth over $42 billion in 2005 and by 2010, the global cancer market is expected to generate sales in excess of $60 billion.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Nadya I. Tarasova *et al.* (NCI)

Publications:

1. NI Tarasova *et al.* Transmembrane inhibitors of P-glycoprotein, an ABC transporter. J Med Chem. 2005 Jun 2;48(11):3768–3775.
2. NI Tarasova *et al.* Inhibition of G-protein-coupled receptor function by disruption of transmembrane domain interactions. J Biol Chem. 1999 Dec 3;274(49):34911–34915.

Patent Status: U.S. Patent Application No. 10/130,192 filed 13 May 2002 (HHS Reference No. E–019–2000/2–US–02); PCT Patent Application No. PCT/US2000/31817 filed 17 Nov 2000 (HHS Reference No. E–019–2000/2–PCT–01); U.S. Provisional Patent Application No. 60/166,767 filed 22 Nov 1999 (HHS Reference No. E–019–2000/1–US–01); U.S. Provisional Patent Application No. 60/166,382 filed 18 Nov 1999 (HHS Reference No. E–019–2000/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute's Structural Biophysics Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize inhibitors of multiple drug resistance proteins. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: May 21, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10332 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training; NCI–F.

Date: June 13–14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; CA 07–505, ''The American College of Radiology Imaging Network (ACRIN) (Limited Competition U01).''

Date: June 20–21, 2007.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Park Hyatt Philadelphia, Broad and Walnut Streets, Philadelphia, PA 19102.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7147, Bethesda, MD 20852, 301–496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2664 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 26, 2007.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: 10 a.m. to 5 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, Concept Clearance Report, Health Disparities Research Update, Scientific Program Presentations, and other business of the Council.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–435–2135, *brooksd@ncmhd.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Dated: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2662 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI Research Grant Review Panel.

Date: June 29, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2661 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Genome Research Review Committee, June 8, 2007, 1 p.m. to June 8, 2007, 3 p.m., National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, which was published in the **Federal Register** on May 17, 2007, 72 FR 95, page 27822.

The GNOM–G telephone conference date is changed from June 8, 2007, to June 14, 2007. The meeting time remains 1 p.m. to 3 p.m. The meeting is closed to the public.

Dated: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2663 Filed 5–29–07; 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 Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Conflict SEP.

Date: June 14, 2007.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2666 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MBRS Support of Competitive Research.

Date: June 19, 2007.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Margaret J. Weidman, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2665 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grants.

Date: June 18, 2007.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3200, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Th2 Cell Development, Persistence and Exhaustion.

Date: June 21, 2007.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3144, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Thames E. Pickett, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pickettte@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: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2671 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Roadmap—Facilitating Interdisciplinary Research.

Date: July 9–10, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd, Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2672 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be open to the public, 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 inform the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: June 25, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: Policy Discussion.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, Maryland 20910, Phone: 301–587–4791.

Contact Person: John D. Porter, PhD, Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2172, Bethesda, MD 20892, (301) 496–1917, *porterjo@ninds.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 MDCC Web site: *http://www.ninds.nih.gov/resaerch/muscular_dystrophy/coordinating_committee,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 23, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2673 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 25, 2007, 8:30 a.m. to June 26, 2007, 4 p.m., George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC, 20037 which was published in the **Federal Register** on May 21, 2007, 72 FR 28515–28517.

The meeting will be held on June 25, 2007, from 8:30 a.m. to 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2667 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 26, 2007, 12 p.m. to June 26, 2007, 1:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 21, 2007, 72 FR 28515–28517.

The meeting title has been change to ''CIHB Member Special Emphasis Panel''. The meeting is closed to the public.

Dated: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2668 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 19, 2007, 1 p.m. to June 19, 2007, 1:30 p.m., The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037 which was published in the **Federal Register** on May 21, 2007, 72 FR 28515–28517.

The meeting was cancelled due to administration problems.

Dated: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2669 Filed 5–29–07; 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; Social Science and Population Studies R03s, R15s, and R21s.

Date: June 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2102 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrant@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Community-Level Health Promotion: Smaller Research Mechanisms.

Date: June 15, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BDCN F (02) Anterior Eye Disease Member Conflict.

Date: June 19, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: June 21–22, 2007.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Kathy Salaita, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504 *salaitak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Requirements of B Cell Receptor Antigen Internalization.

Date: June 27, 2007.

Time: 11 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: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Parasites.

Date: June 27, 2007.

Time: 1:30 p.m. to 4 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: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Complex Human Genetics.

Date: June 28–29, 2007.

Time: 9 a.m. to 11:59 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BDCN–F (12) Visual System Small Business.

Date: June 29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Insulin Action.

Date: June 29, 2007.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@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: May 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2670 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Cripto-1 as Claimed in the Licensed Patent Rights, for the Development of a FDA Approved Diagnostic Kit for Human Cancers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent No. 7,078,176; European Patent No. 1370869 and PCT Application No. PCT/US02/02225 and foreign equivalents thereof entitled ''Detection and quantification of Cripto-1'' (E–290–2000/0), to Biosite, Inc, which is located in San Diego, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of the Licensed Patent Rights, for the development of a FDA approved diagnostic kit for human cancers.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 30, 2007 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; E-mail: *boodenm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Cripto-1 (CR1) is a member of the epidermal growth factor (EGF)-related families of peptides and is involved in the development and progression of various human carcinomas. In particular, CR1 overexpression has been detected in 50–90% of carcinomas of the colon, pancreas, stomach, gallbladder, breast, lung, endometrium and cervix. Current methodologies of cancer detection, *e.g.* immunohistochemistry, can be time consuming, inconvenient and oftentimes, inaccurate, and therefore, a need exists for more efficient, reliable and less time consuming methods of detection. The invention relates to such a method of detection. The inventors disclose methods for the detection and quantification of CR1 in human milk, using an ELISA-based protocol. This test could also be used to more effectively detect and perhaps stage cancers. Additionally, should particular tumor cells, *e.g.* breast tumor cells, express a sufficiently high level of CR1, it may be possible to use the assay to detect and measure CR1 in human serum and/or plasma.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 22, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10352 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Anti-HIV Therapeutics, Anti-HIV Topical Microbicides, and Anti-Breast Cancer Therapeutics

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in:

PCT/US99/13856 filed June 18, 1999, preceded by U.S. Provisional Patent Application Serial No. 60/089,842 (HHS Ref. E–136–1998/0–US–01), filed June 19, 1999, entered the national stage filing in June 1999 in Korea Patent Application No. 10–2000–7014479; in Mexico Patent Application No. 012525; in Australia Patent Application No. 46972/99; in Canada Patent Application No. 2335464; in Brazil Patent Application No. PI9911385–6; in U.S. Patent No. 6,706,729 and filed DIV in U.S. Patent Application No. 10/738,062 in December 2003; in EPO Patent Application No. 99930428.0 and validated in Germany, France, United Kingdom, Italy and Ireland in November 2006, entitled ''Novel Thioesters and Uses Thereof'', Inventors: Drs. James A. Turpin (NCI), Yongsheng Song (NCI), John K. Inman (NIAID), Mingjun Huang (NCI), Anders Wallqvist (NCI), Andrew Maynard (NCI), David G. Covell (NCI), William G. Rice (NCI), and Ettore Appella (NCI);

PCT/US02/23924 filed July 25, 2002, preceded by U.S. Provisional Patent Application Serial No. 60/310,133 (E–329–2000/0–US–01), filed August 3, 2001, entered the national stage filing in February 2004 in EPO Patent Application No. 02756732.0; in Australia Patent Application No. 2003322721; in Canada Patent Application No. 2456083 and U.S. Patent Application No. 10/485,165, entitled ''Acylthiols and Component Thiol Compositions as Anti-HIV and Anti-Retroviral Agents'', Inventors: Drs. John K. Inman (NIAID), Atul Goel (NCI), Ettore Appella (NCI), and Jim A. Turpin (NCI);

to ImQuest Pharmaceuticals Inc. (Hereafter ImQuest), having a place of business in Frederick, Maryland. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before July 30, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov;* Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

E–136–1998/0-US–01 describes composition claims for a novel family of thiolesters and uses thereof. These thiolesters are capable of inactivating viruses by a variety of mechanisms, particularly by complexing with metal ion-complexing zinc fingers. The invention further provides for methods for inactivating a virus, particularly human immunodeficiency virus (HIV), using these compounds, and thereby also inhibiting transmission of the virus.

E–329–2000/0–US–01 provides a novel family of acylthiols, and polypeptides, pharmaceutical compositions, devices and other materials containing them, and uses thereof. More specifically, this invention provides covalent (irreversible) inhibitors of HIV that selectively target its highly conserved nucleocapsid protein (NCp7) by dissociating a metal ion from a zinc finger-containing protein. Because of the mutationally intolerant nature of NCp7, drug resistance is much less likely to occur with drugs attacking this target. In addition, these drugs should inactivate all types and strains of HIV and could also inactivate other retroviruses since most retroviruses share one or two highly conserved zinc fingers that have the Cys-Cys-His-Cys motif of the NCp7. Finally, this invention could be very useful for the large-scale practical synthesis of HIV inhibitors because these compounds can be prepared from inexpensive starting materials and facile reactions. Thus, it opens the possibility that an effective drug treatment for HIV could reach underdeveloped countries.

The field of use may be limited to the development of anti-HIV therapeutics, anti-HIV topical microbicides and anti-breast cancer therapeutics.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Date: May 22, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10334 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Proteomics in Cancer Diagnostics and Therapy

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), a federal agency under the Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in HHS Ref. No. E–261–1998 ''Methods and Devices for Isolation and Analysis of Cellular Protein Content;'' U.S. Patent 6,969,614; and E–039–2003/0 ''Combinatorial Therapy for Protein Signaling Diseases,'' U.S. Patent Application No. 10/798,799 filed March 10, 2004; to Theranostics Health, LLC, a Limited Liability Company formed under the laws of the state of Delaware and having a principle place of business in Rockville, Maryland. The United States of America is the assignee of the patent rights in the above inventions.

The contemplated exclusive license may be granted a field limited to proteomic diagnostics for cancer requiring regulatory approval.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before July 30, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure

agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following:

E–039–2003 ''Combinatorial Therapy for Protein Signaling Diseases''

The invention is drawn to methods for individualizing therapy based on information obtained concerning deranged signaling pathways that cause disease. The invention includes the use of protein microarrays to detect the deranged signaling pathways that are specific for the subject's disease. The invention covers the use of combination therapy targeting multiple points in the protein network. The invention is based, in part, on the unexpected discovery that treatment of interconnected nodes in a protein signaling pathway can provide a synergistic improvement in therapeutic efficacy at reduced toxicity. For example, a protein signaling network of a diseased cell (e.g., colon cancer) is analyzed and the information obtained from the analysis is used to select at least two drugs whose targets are interconnected within the protein signaling network.

E–261–1998 ''Methods and Devices for the Isolation and Analysis of Cellular Protein Content''

The invention is a comprehensive Laser Capture Microdissection (LCM) method for determining protein characteristics of a sample tissue cell to quantitatively discern and compare the protein content of healthy cells versus diseased cells. The tissue source of a tumor metastasis is available from the acquisition of this information. The focus in molecular biology is moving from genomics to proteomics, the study of variations in the protein levels of cells, caused by the state of the cell itself, whether healthy or unhealthy. The invention provides a method for using new and innovative methods for cell analysis. Previous methods, such as UV-laser ablation of unwanted tissue regions and oil well isolation of tissue cells, were complex, labor intensive, and did not utilize protein stabilizers. Direct comparisons between healthy cells and tumor cells were not made due to limitations of the methods. The new method consists of first using the new LCM method to obtain pure cell populations. Next, the sample is placed in a device so that the proteins are solubilized. Then the immunological and biochemical methods and subsequent analyses are performed. These techniques include (but are not limited to) immunoassays, 1D and 2D gel electrophoresis characterization, Western blotting, Matrix Assisted Laser Desorption Ionization/Time of Flight (MALDI/TOF) and Surface Enhanced Laser Desorption Ionization Spectroscopy (SELDI), Protein Arrays and Phosphoprotein Fingerprinting. The methods listed above allow for the direct comparison of both qualitative and quantitative tissue content of healthy and diseased cells, from the same sample. The sequential method of using LCM, protein isolation, analysis and comparison is superior to existing methods because the location of the tumor can be found simply using immunohistochemistry, and protein characteristics, such as amino acid sequence and binding ability can also be discerned. In addition, by using protein fingerprinting, the source of the tumor metastasis is found effectively. The invention has been tested extensively with the different methods listed above. This technology can be used in hospitals and research pathology labs for quantitative measure of protein characteristics of cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 21, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10354 Filed 5–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0031]

Science and Technology Directorate; Submission for Review; New Information Collection Request for Support of TechSolutions New Account Request Data Form, New Capability Gap Data Form, and Feedback Data Form

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60 day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) TechSolutions program is responsible for providing information, technology, and training to the first responder community. The TechSolutions program will use web-based technology to collect submitter and capability gap information. DHS is soliciting public comment on the New Account Request Data (DHS Form 10015), New Capability Gap Data (DHS Form 10011), and Feedback Data (DHS Form 10012) forms and instructions (hereinafter ''Forms Package'') designed to collect submitter and capability gap information from first responders (federal, state, local, and tribal police, firefighters, and Emergency Medical Service) through the TechSolutions Web site. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until July 30, 2007.

ADDRESSES: You may submit comments, identified by docket number DHS–2007–0031, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ken.rogers@dhs.gov.* Include docket number DHS–2007–0031 in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: OCIO/Ken Rogers, 245 Murray Drive, Bldg 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Ken Rogers (202) 254–6185 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: DHS invites the general public to comment on the new information collection forms, as described below.

Interested parties can obtain copies of the Forms Package by calling or writing the point of contact listed above.

Please note that the Forms Package include three forms for collecting

submitter and capability gap information from first responders (federal, state, local, and tribal police, firefighters, and Emergency Medical Service). As explained herein, these separate forms are intended to be flexible and permit DHS S&T to address reported capability gaps, leading to improved safety and productivity without undue bureaucratic burden. The Department is committed to improving its TechSolutions processes and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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 submissions of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* TechSolutions New Account Request Data Form, New Capability Gap Data Form, and Feedback Data Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* New Account Request Data—DHS Form 10015, New Capability Gap Data—DHS Form 10011, and Feedback Data—DHS Form 10012

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or other for-profit, not-for profit institutions, and state, local or tribal government; the data collected through the TechSolutions Forms Package will be used to address reported capability gaps, leading to improved safety and productivity for first responders.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: New Account Request Data Form (DHS Form 10015)—75,000 respondents annually/30 minutes per respondent, New Capability Gap Data Form (DHS Form 10011)—500 respondents annually/2 hours per respondent, and Feedback Data Form (DHS Form 10012)—500 respondents annually/30 minutes per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 38,750 burden hours.

Dated: April 19, 2007.

Kenneth D. Rogers,

Chief Information Officer.

[FR Doc. E7–10382 Filed 5–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Form G–146, Nonimmigrant checkout letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 30, 2007, Vol. 72, No. 61, 15143–4, 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 for thirty days until June 29, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514–3211.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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 currently approved information collection.

(2) *Title of the Form/Collection:* Order to Show Cause.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–146, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room

1122, Washington, DC 20536; (202) 616–2266.

Dated: May 16, 2007.

Ricardo Lemus,

Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–10296 Filed 5–29–07; 8:45 am]

BILLING CODE 9110–A3–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–901, Fee Remittance for Certain F, J and M Nonimmigrants; OMB Control No. 1653–0034

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 30, 2007, Vol. 72 No. 61 15144, allowing for a 60-day 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 for thirty days until June 29, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514–3211.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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 currently approved information collection.

(2) *Title of the Form/Collection:* Fee Remittance for Certain F, J and M Nonimmigrants.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–901, Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households. Public Law 104–208, Subtitle D, Section 641 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended or in a program of study at any other DHS-approved academic or language-training institution, to include approved private elementary and secondary schools and public secondary schools, and from approved exchange visitor program sponsors designated by the Department of State (DOS). It also authorized a fee, not to exceed $100, to be collected from these students and exchange visitors to support this information collection program. DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 19 minutes (.32) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,000 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: May 16, 2007.

Ricardo Lemus,

Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–10297 5–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6695; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Port Graham Corporation. The lands are in the vicinity of Port Graham, Alaska, and are located in:

Tract A, U.S. Survey 1642, Alaska.
Containing 1.01 acres.

The subsurface estate in these lands will be conveyed to Chugach Alaska Corporation when the surface estate is conveyed to The Port Graham Corporation. Notice of the decision will also be published four times in the Homer Tribune.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 29, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone

at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jennifer L. Noe,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–10314 Filed 5–29–07; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–584]

In the Matter of Certain Alendronate Salts and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Withdraw the Complaint and Terminate the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) issued by the presiding administrative law judge (''ALJ'') granting complainant's motion to withdraw the complaint and terminate the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Christal A. Sheppard, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 22, 2006, based on a complaint filed by Merck & Co., Inc., of Whitehouse Station, New Jersey. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain alendronate salts and products containing the same by reason of infringement of claims 1–5 of United States Patent No. 4,922,007. The complaint further alleges that an industry exists as required by subsection (a)(2) of section 337. The complaint named CIPLA, Ltd., of Mumbai, India as respondent in this investigation.

On February 26, 2007, the complainant filed a motion to terminate the investigation as to all parties based on withdrawal of the complaint, pursuant to 19 CFR 210.21(a). On April 30, 2007, the ALJ issued an ID (Order No. 12) granting the complainant's motion. No petitions for review were received and the Commission has determined not to review this ID. Accordingly, the above-captioned investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: May 23, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10320 Filed 5–29–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–591]

In the Matter of Certain Wireless Conference Calling Devices, Components Thereof, and Devices Containing the Same; Notice of Commission Decision Not To Review Initial Determination Granting Motion To Withdraw Complaint and Terminate Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 3) granting the motion to withdraw the complaint and terminate the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. Copies of the ALJ's ID and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On January 31, 2007, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint (December 29, 2006) and supplemental complaint (January 17, 2007) filed by Callpod, Inc. of Chicago, Illinois, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain wireless conference calling devices, components thereof, and devices containing same by reason of infringement of claims 1, 3, 6, 9, 10, 12, and 15 of U.S. Patent No. 6,801,611. 72 FR 5300–01 (February 5, 2007). The complaint, as supplemented, named GN Netcom, Inc. of Nashua, NH; GN Netcom A/S of Ballerup, Denmark; and GN Store Nord A/S of Ballerup, Denmark as respondents.

On April 5, 2007, the complainant moved to withdraw the complaint and terminate the investigation. On April 16, 2007, the Commission Investigative Staff filed a response in support of complainant's motion to withdraw the complaint. On April 18, 2007, respondents filed a response in partial opposition to complainant's motion to withdraw.

On April 30, 2007, the ALJ issued an ID (Order No. 3) (copy attached) granting the motion to withdraw the complaint and terminate the investigation. The ALJ found no indication that termination of the investigation would adversely affect the public interest, and that the procedural

requirements for terminating the investigation had been met. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 24, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10293 Filed 5–29–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9 a.m. to 4:30 p.m. on Monday, June 1, 2007, 9 a.m. to 4:30 p.m. on Tuesday, June 12, 2007.

Place: National Correctional, Training Academy & Information Center, 791 Chambers Road, Aurora, Colorado 80011, Tel: 303–365–4450.

Status: Open.

Matters To Be Considered: Tour of the new Academy & Information Center in Aurora, Colorado; Live Demonstration of Distance Learning; meeting the New Deputy Director Thomas Beauclair; Norval Morris Project; Agency Reports; Quarterly Report by Office of Justice Programs; U.S. Parole Commission; American Corrections Association; Federal Judicial Center.

Contact Person for More Information: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 07–2660 Filed 5–29–07; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 23, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov,* or by accessing *http://www.reginfo.gov/public/do/PRAMain.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Bureau of Labor Statistic (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revisions for a currently approved collection.

Title: CPS Volunteer Supplement.

OMB Number: 1220–0176.

Frequency: Annually.

Affected Public: Individuals.

Type of Response: Reporting.

Number Of Respondents: 63,000.

Number of Annual Responses: 106,000.

Estimated Time per Response: 3 minutes.

Total Burden Hours: 5,300.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs: 0 (operating/maintaining systems or purchasing services.

Description: The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance for the Volunteer Supplement to the Current Population Survey (CPS), scheduled to be conducted in September 2007. The CPS has been the principal source of the official Government statistics on employment and unemployment for over 60 years. Collection of labor force data through the CPS helps BLS meet its mandate as set forth in Title 29, United States Code, Sections 1 through 9.

As part of the CPS, supplement questions will survey individuals ages 15 and over from a nationally representative sample of approximately 60,000 U.S. households. The BLS is continuing this project at the request of the Corporation for National and Community Service.

The Volunteer Supplement provides information on the total number of individuals in the U.S. involved in unpaid volunteer activities, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, activities in which volunteers participate, and the prevalence of volunteering more than 120 miles from home or abroad.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS is available about respondents to the Supplement. Thus, comparisons of volunteer activities are possible across respondent characteristics including sex, race, age, and educational. It is intended that the Supplement will be conducted annually, if resources permit, in order to gauge changes in volunteerism.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–10289 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,298]

American Manufacturing International, Inc.; Patterson, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 11, 2007 a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of American Manufacturing International, Inc., Patterson, New Jersey was signed on May 1, 2007 and

published in the **Federal Register** on May 17, 2007 (72 FR 27855).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at American Manufacturing International Inc., Patterson, New Jersey engaged in the retailing of chemicals was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as providing a service and further conveys that workers of the subject firm mix various chemicals using recipes and then sell them to textile plants.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that the subject firm has outsourced production of chemicals to another independent company since 2004. The official clarified that workers of the subject firm did not mix or react chemicals in 2006 and January through April of 2007.

Moreover, a review of the record established that only one worker was separated from American Manufacturing International, Inc., Patterson, New Jersey during the relevant time period.

When assessing eligibility for TAA, the Department makes its determinations based on the requirements as outlined in Section 222 of the Trade Act. The investigation revealed that American Manufacturing International, Inc., Patterson, New Jersey did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers in a firm or appropriate subdivision thereof, means that at least three workers with a workforce of fewer than 50 workers, five percent of the workers with a workforce over 50 workers, or fifty workers.

Also, since the total number of separated workers was one during the relevant period, workers of American Manufacturing International, Inc., Patterson, New Jersey do not meet the group eligibility requirements for trade adjustment assistance, since

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of May, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10310 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,334]

Cinram Manufacturing, LLC; Olyphant, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 18, 2007 in response to a petition filed by a company official on behalf of workers of Cinram Manufacturing, LLC, Olyphant, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 24th day of May, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10311 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,275]

DeRoyal Textiles, Inc.; Yarn Plant; Camden, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2007 in response to a worker petition filed by a company official on behalf of workers at DeRoyal Textiles, Inc., Yarn Plant, Camden, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of May, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10309 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 11, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 11, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/14/07 and 5/18/07]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61502	Digitron Packaging, Inc. (Wkrs)	Redford, MI	05/14/07	05/11/07
61503	Liz Palacios Designs (Wkrs)	San Francisco, CA	05/14/07	05/11/07
61504	Woodmarc Enterprises, LLC (Comp)	Winterset, IA	05/14/07	05/10/07
61505	Trinity/Allegheny Axle Co., Inc. (Wkrs)	Butler, PA	05/14/07	05/14/07
61506	Celestica (Wkrs)	Carrollton, TX	05/14/07	05/10/07
61507	CGI (at Cott Beverages) (Comp)	Wyomissing, PA	05/14/07	05/01/07
61508	Victor Products/ Div Dana Corp. (State)	Robinson, IL	05/15/07	05/14/07
61509	WestPoint Home, Inc. (Comp)	Opelika, AL	05/15/07	05/14/07
61510	Wehadkee Yarn Mills (Comp)	West Point, GA	05/15/07	05/14/07
61511	Alexander Technologies (Comp)	Mason City, IA	05/15/07	05/15/07
61512	Freudenberg (Comp)	Newport, TN	05/16/07	05/15/07
61513	WestPoint Home, Inc. (Comp)	Chipley, FL	05/16/07	05/16/07
61514	WestPoint Home, Inc. (Comp)	Marianna, FL	05/16/07	05/16/07
61515	Invitrogen Corporation (Wkrs)	San Francisco, CA	05/16/07	05/14/07
61516	Best Textiles International Ltd. (Wkrs)	West Point, MS	05/16/07	05/15/07
61517	KI USA (Wkrs)	Berea, KY	05/16/07	05/02/07
61518	Culligan (Wkrs)	Northbrook, IL	05/16/07	04/27/07
61519	Thermal Fisher Scientific (State)	Mountainside, NJ	05/16/07	05/15/07
61520	Fair-Rite Products Corporation (Comp)	Flat Rock, IL	05/16/07	05/15/07
61521	Durham Manufacturing Company (The) (State)	Durham, CT	05/16/07	05/15/07
61522	Unifi, Inc. (Comp)	Dillon, SC	05/16/07	05/10/07
61523	Central Brass Manufacturing Company (Wkrs)	Cleveland, OH	05/16/07	04/27/07
61524	World Kitchen, LLC (Comp)	Charleroi, PA	05/16/07	05/15/07
61525	Ametek (Comp)	Racine, WI	05/16/07	05/01/07
61526	Henkel Technologies (Comp)	Olean, NY	05/17/07	05/16/07
61527	Fleetwood Travel Trailers of Kentucky, Inc. (Comp)	Campbellsville, KY	05/17/07	05/17/07
61528	Laneventure Furniture (Comp)	Conover, NC	05/17/07	05/16/07
61529	Schott Lithotec USA Corp (Comp)	Poughkeepsie, NY	05/17/07	05/16/07
61530	Track Corp (Comp)	Spring Lake, MI	05/17/07	05/16/07
61531	James Jones Company (Wkrs)	El Monte, CA	05/17/07	05/10/07
61532	GHS Strings (Wkrs)	Battle Creek, MI	05/17/07	05/16/07
61533	Seaside Inc. (Wkrs)	Warren, ME	05/17/07	05/10/07
61534	Merkle-Korff Industries, Inc. (Comp)	Richland Center, WI	05/17/07	05/16/07
61535	The Paslin Company (Wkrs)	Warren, MI	05/17/07	05/15/07
61536	Tenneco, Inc.—Virginia Beach (Comp)	Virginia Beach, VA	05/17/07	05/16/07
61537	Aperture Grille Division, Sony Electronics Inc. (Comp)	Mt. Pleasant, PA	05/18/07	05/17/07
61538	Intermet Corporation (Comp)	Spring Grove, IL	05/18/07	05/17/07
61539	Interlake Material Handling, Inc. (Comp)	Lodi, CA	05/18/07	05/17/07
61540	Santens of America, Inc. (Comp)	Anderson, SC	05/18/07	05/16/07
61541	South Indiana Lumber Co., Inc. (Wkrs)	Liberty, KY	05/18/07	05/16/07
61542	Kenakore Solutions (Wkrs)	Perrysburg, OH	05/18/07	05/04/07
61543	KMC Holding LLC (Wkrs)	Van Wert, OH	05/18/07	05/10/07

[FR Doc. E7–10303 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,086]

Ford Motor Company Product Development and Engineering Center; Dearborn, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated April 15, 2007, three workers requested administrative reconsideration by the Department of Labor (Department) of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on March 15, 2007. The Department's Notice of determination was published in the **Federal Register** on March 30, 2007 (72 FR 15168). The subject worker group performed product development and engineering services.

The determination states that ''In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act, the worker group seeking certification (or on whose behalf

certification is being sought) must work for a ''firm'' or appropriate subdivision that produces an article domestically and there must be a relationship between the workers' work and the article produced by the workers' firm or appropriate subdivision.'' The negative determination was based on the Department's findings that the subject worker group did not directly support subject firm production.

In the request for reconsideration, the workers alleged that the subject worker group directly supported domestic production of automobiles produced by Ford Motor Company.

The Department has carefully reviewed the workers' request for reconsideration and the existing record, and has determined that an administrative review is appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10305 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,065]

Freight Car America; a Subsidiary of Johnstown America Including On-Site Leased Workers of Sargent's Personnel Agency, Inc.; Johnstown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 24, 2007, applicable to workers of Freight Car America, a subsidiary of Johnstown America, Johnstown, Pennsylvania. The notice was published in the **Federal Register** on May 9, 2007 (72 FR 26424).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of freight (rail) cars and parts.

New information shows that leased workers of Sargent's Personnel Agency, Inc. were employed on-site at the Johnstown, Pennsylvania location of Freight Car America, a subsidiary of Johnstown America.

Based on these findings, the Department is amending this certification to include leased workers of Sargent's Personnel Agency, Inc. working on-site at Freight Car America, a subsidiary of Johnstown America, Johnstown, Pennsylvania.

The intent of the Department's certification is to include all workers employed at Freight Car America, a subsidiary of Johnstown America, Johnstown, Pennsylvania who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–61,065 is hereby issued as follows:

''All workers of Freight Car America, a subsidiary of Johnstown America, including on-site leased workers of Sargent's Personnel Agency, Inc., Johnstown, Pennsylvania, who became totally or partially separated from employment on or after March 5, 2006 through April 24, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of May 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10307 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,000]

Gibraltar DFC Strip Steel LLC; Farrell, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked May 4, 2007, United Steelworkers, District 10 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on April 6, 2007 and published in the **Federal Register** on April 24, 2007 (72 FR 20370).

The initial investigation resulted in a negative determination based on the finding that imports of cold rolled strip steel did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st of May, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10306 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,461]

The Troxel Company; West Point, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 7, 2007 in response to a petition filed by a company official on behalf of workers at The Troxel Company, West Point, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of May 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10312 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 14 through May 18, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

NONE

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

NONE

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA: May 14, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

NONE

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,125; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006

TA–W–61,125A; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006

TA–W–61,125B; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006

TA–W–61,161; Indalex, Inc., On-Site Leased Workers of Volt, Watsonville, CA: March 20, 2006

TA–W–61,221; Hickory Hardware/ Belwith International, a Subsidiary of FKI, PLC, Grandville, MI: April 1, 2006

TA–W–61,285; Metrologic Instruments, Corporate Division, Blackwood, NJ: April 10, 2006

TA–W–61,386; Berkline, LLC, Livingston, TN: April 25, 2006

TA–W–61,410; CGI Circuits, Inc., Taunton, MA: April 20, 2006

TA–W–61,419; Firestone Tube Company, Russellville, AR: April 30, 2006
TA–W–61,452; Commonwealth Home Fashions, Willsboro, NY: May 4, 2006
TA–W–60,891; Cheetah Chassis Corporation, Berwick, PA: January 29, 2006
TA–W–61,226; Delphi Corporation, Auto Holdings Group, Instrument Cluster Plant, Mays Chemicals, Flint, MI: March 30, 2006
TA–W–61,277; Tonawanda Valve, Inc., North Tonawanda, NY: April 5, 2006
TA–W–61,290; Flexible Technologies, Flexible Solutions Division, including On-Site Leased Workers of Employment Solutions, Abbeville, SC: April 10, 2006
TA–W–61,341; Carrier Access Corp., Roanoke, VA: April 19, 2006
TA–W–61,346; Northland Tool Corp., Traverse City, MI: April 17, 2006
TA–W–61,371; Grand Marais Investors, Inc., dba K.B. Cook Incorporated, Traverse City, MI: April 9, 2006
TA–W–61,412; Carlisle Finishing, LLC, Finishing Division, Carlisle, SC: April 27, 2006
TA–W–61,208; GKN Sinter Metals, Inc., Worcester, MA: March 27, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,219; Collins and Aikman, Automotive Technical Center, Dover, NH: March 28, 2006
TA–W–61,280; Dutailier Virginia, Inc., Martinsville, VA: March 28, 2006
TA–W–61,318; Epic Technologies, Inc., On-Site Leased Workers of Superior Technical Resources, Johnson City, TN: April 16, 2006
TA–W–61,318A; Epic Technologies, Inc., Leased Workers of Superior Tech. Resources, Norwalk, OH: April 16, 2006
TA–W–61,364; CyOptics, Inc., Formerly Apogee Photonics, On-Site Leased Workers of Express Personnel Service, Breingsville, PA: April 23, 2006
TA–W–61,421; Filtrona Richmond, Inc., a subsidiary of Filtrona, PLC, Richmond, VA: April 20, 2006
TA–W–61,435; Sanmina-SCI Corporation, dba Hadco Corporation, Printed Circuit Board Division, Phoenix, AZ: May 1, 2006
TA–W–61,443; Seagate Technology, LLC, Shakopee Division, Shakopee, MN: May 3, 2006
TA–W–61,448; VCST Powertrain Components, Inc., a subsidiary of VCST Inc., Leased Workers of Aerotek & Entech, Chesterfield, MI: May 2, 2006
TA–W–61,475; Plastiflex, Santa Ana, CA: May 8, 2006
TA–W–61,243; Ferro Electronic Material Systems, Niagara Falls, NY: April 3, 2006
TA–W–61,292; Millipore Corporation, Bioscience Division, On-Site Leased Workers From Veritude, Danvers, MA: April 10, 2006
TA–W–61,394; Aavid Thermalloy LLC, Leased Workers of All Staff, Central NH Employment, Laconia, NH: April 24, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,246; Bush Industries, Inc., Little Valley Facility, Little Valley, NY: April 2, 2006
TA–W–61,253; Keystone Powered Metal Co., Columbus, OH: April 3, 2006
TA–W–61,469; Southern Tool Manufacturing Co., Inc., Winston-Salem, NC: May 7, 2006
TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA: May 14, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

NONE

Negative Determinations For Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

NONE

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

NONE

Negative Determinations For Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,385; The Nielsen Company, Formerly Known as A.C. Nielsen Co., Fond du Lac, WI.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

NONE

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,908; Georgia Pacific, Consumer Products Division, Muskogee, OK.
TA–W–60,958; Sekely Industries, Inc., On-Site Leased Workers of Staffright, Bartech, Alliance Staffing, Salem, OH.
TA–W–61,086; Delta Consolidated, Inc., Danaher Tool Group Division, Raleigh, NC.
TA–W–61,101; Ameridrives International, Inc., Erie, PA.
TA–W–61,150; Boise Cascade, LLC, Paper Division, Salem, OR.
TA–W–61,164; Intel Corporation, Fab 7 Test Factory, Rio Rancho, NM.
TA–W–61,172; Keystone Weaving Mills, Inc., York, PA.
TA–W–61,223; Waterbury Buckle Co., A Division of Illinois Tool Works, Inc., Waterbury, CT.
TA–W–61,284; Continental Structural Plastics, Petoskey, MI.
TA–W–61,290A; Flexible Technologies, Heat Solutions Division, Abbeville, SC.
TA–W–61,338; Willow Hill Industries, LLC, Willoughby, OH.
TA–W–61,322; Oregon Cutting Systems Group, a wholly owned subsidiary of Blount, Inc., Warehouse, Clackamas, OR.
TA–W–61,355; Texas Instruments, Inc., Silicon Technology Development, Dallas, TX.

The investigation revealed that the predominate cause of worker

separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

NONE

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,268; Hewlett Packard Company, Technology Solutions Group, Global Mission Critical Solution, Austin, TX.

TA–W–61,342; APL Information Services, LTD, a subdivision of APL Limited, Oakland, CA.

TA–W–61,352; SSA Cooper, Georgetown, SC.

TA–W–61,445; United Airlines, Inc., Sales Support Operation Center, Elk Grove Village, IL.

TA–W–61,482; Avon Products, Inc., Avon National Contact Center, Springdale, OH.

TA–W–61,502; Digitron Packaging, Inc., Redford, MI.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

NONE

I hereby certify that the aforementioned determinations were issued during the period of May 14 through May 18, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 23, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–10304 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. ETA is soliciting comments on a new data collection for the High Growth Job Training Initiative (HGJTI) and Community-Based Job Training (CBJT) programs. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed in the Addressee section of this notice or at this Web site: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*

DATES: Written comments must be submitted to the office listed in the Addressee section on or before July 30, 2007.

ADDRESSES: Ms. Jennifer McNelly, Business Relations Group, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, Room N–4643, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3949 (this is not a toll-free number). Fax (202) 693–3890 or e-mail *businessrelations@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Grantees that are awarded High Growth Job Training Initiative (HGJTI) grants and the Community-Based Job Training Grants (CBJTG) will be required to submit standardized quarterly reports summarizing the number and types of participants served by grantees, the number of exiters, the number of participants engaged in training activities, and participant outcomes. These outcomes include the number of participants who received a degree or certificate, who were placed in employment, and who were placed in training-related employment. In addition, ETA will require grantees to submit records of program exiters on a quarterly basis. These records will help ETA compute the Office of Management and Budget's (OMB) common job training and employment performance measures, gauge the effects of the HGJTI and CBJTG grants, identify grantees that could serve as useful models, and target technical assistance appropriately.

The HGJTI and CBJTG reporting and record keeping requirements are consistent with the President's Management Agenda to improve the management and performance of the Federal government and OMB's common performance measures. The measures are applied to certain Federally funded employment and training programs with similar strategic goals, including the HGJTI and CBJTG programs. These common performance measures enhance the government's ability to assess the effectiveness of the workforce investment system as a whole, including its performance in serving people who face significant barriers to employment. By minimizing the differences in reporting and performance requirements across programs, common performance measures facilitate the integration of service delivery and break down barriers to coordination among programs. Common performance measures also reduce the reporting burden for states and grantees, by providing consistent performance measurement definitions and methodologies across programs.

The common job training and employment measures are, therefore, a key component of the HGJTI and CBJTG performance accountability system, because they permit the core purposes of the workforce system to be described in a similar manner.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest how to enhance the quality, utility, and clarity of the information to be collected; and
- Suggest how 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 submissions of responses.

III. Current Actions

Type of Review: New.

Agency: Department of Labor, Employment and Training Administration.

Title: High Growth and Community-Based Job Training Grants: General Quarterly Reporting Forms & Instructions.

OMB Number: 1205–0NEW.

Agency Number(s): Form ETA–9134.

Recordkeeping: 3 Years.

Affected Public: Grantees and program participants.

Cite/Reference/Form: Workforce Investment Act of 1998 and the American Competitiveness in the Twenty-first Century Act of 2000.

Type of Response: Mandatory.

Frequency: Quarterly.

Total Respondents: 272 Grantees.

Total Annual Responses: 2,176 submissions annually—Each grantee submits a file of program exiter records and a summary report each quarter, for a total of eight submissions each year per grantee.

Estimated Total Burden Hours: 53,464 (see table for details).

Form/activity	Annual national burden (hours)	Total respondents	Average annual hours per respondent
Participant Data Collection	23,000	272 grantees	85
Quarterly Performance Report	30,464	272 grantees	112
Total	53,464		197

Average Response Time: 197 hours per grantee each year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 24, 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E7–10353 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0034]

Overhead and Gantry Cranes; 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 Overhead and Gantry Cranes (29 CFR 1910.179).

DATES: Comments must be submitted (postmarked, sent, or received) by July 30, 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, Docket No. OSHA–2007–0034, 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–2007–0034). 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 website. 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).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among employees by ensuring that all critical components of the crane are inspected and tested on a periodic basis and that the crane is not used to lift loads beyond its rated capacity.

(A) Marking the Rated Load (§§ 1910.179(b)(3), (b)(5), and (k)(2))

Paragraph (b)(5) requires that the rated load be plainly marked on the side of each crane. If the crane has more than one hoist, the rated load must be marked on each hoist or the load block. The manufacturer will mark the rated loads. If the crane is modified, paragraph (b)(3) requires the new rating to be determined and marked on the crane. Also, paragraph (k)(2) requires employers to retain rated test load results and that the results are readily available to appointed personnel. Marking the rated load capacity of a crane ensures that employers and employees will not exceed the limits of the crane, which can result in crane failure.

(B) Inspection of and Certification Records for Hooks and Hoist Chains (§§ 1910.179(j)(2)(iii), (j)(2)(iv), and (j)(4))

Paragraphs (j)(2)(iii) and (j)(2)(iv) require monthly inspections with certification records of hooks and hoist chains. The certification must include the date of the inspection, the signature of the person who performed the inspection, and the serial number, or other identifier, of the inspected hook or hoist chain. Paragraph (j)(4) requires that cranes that are not in regular use meet the requirements of paragraph (j)(2). Paragraph (j)(4)(iii) specifically requires that standby cranes be inspected semi-annually in accordance with paragraph (j)(2). Certification records provide employers, employees, and OSHA compliance officers with assurance that the hooks and hoist chains used on cranes regulated by the Standard have been inspected as required by the Standard. These inspections help assure that the equipment is in good operating condition, thereby preventing failure of the hooks or hoist chains during material handling. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

(C) Repair and Testing of Defective Hooks (§§ 1910.179(l)(3) and (k)(2))

As required by paragraph (k)(2), employers must make readily available test reports of load rating tests of repaired crane hooks conducted under paragraph (l)(3)(iii)(*a*). These reports inform the employer, employees, and OSHA compliance officers that a rated load test was performed, providing information about the capacity of the crane and the adequacy of the repaired hook. This information is used by crane operators so that they will not exceed the rated load of the crane or hook.

(D) Inspection of and Certification Records for Ropes (§§ 1910.179(m)(1) and (m)(2))

Paragraph (m)(1) requires employers to inspect thoroughly all running rope in use, and do so at least once a month. In addition, rope which has been idle for at least a month must be inspected before use, and a record prepared to certify that the inspection was done. The certification record must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

In addition, paragraph (m)(2) requires that the employer thoroughly inspect all rope which has been idle for period of a month or more. This inspection shall be for all types of deterioration and shall be performed by an appointed person whose approval shall be required for further use of the rope. A certification record shall be prepared and include the date of inspection; the signature of the person who performed the inspection; and, an identifier for the rope which was inspected.

(E) Disclosure of Certification Records

The disclosure of certification records provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

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 Overhead and Gantry Cranes (29 CFR 1910.179). The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 360,179 to 360,144 hours for a total reduction of 35 hours. 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 a currently approved collection.

Title: Overhead and Gantry Cranes (29 CFR 1910.179).

OMB Number: 1218–0224.

Affected Public: Business or other for-profit.

Number of Respondents: 35,000.

Frequency: On occasion; monthly; semi-annually.

Average Time Per Response: Varies from 5 minutes (.08 hour) to disclose certification records to 2 hours to obtain and post rated load information on cranes.

Estimated Total Burden Hours: 360,144.

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–2007–0034). 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* website to submit comments and access the docket is available at the website'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.

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 May 23, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–10290 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

[Funding Opportunity No: 17–805]

Veterans' Employment and Training Service; Fiscal Year (FY) 2007 Stand Down Grant Requests

AGENCY: Veterans' Employment and Training Service (VETS), U.S. Department of Labor (USDOL).

ACTION: Initial announcement of available FY 2007 funds under the Homeless Veterans' Reintegration Program to Support Local Stand Down Events.

SUMMARY: The Veterans' Employment and Training Service (VETS) continues to support local Stand Down events that assist homeless veterans and is now accepting applications for Stand Down grant awards. A Stand Down is an event held in a local community where homeless veterans are provided with a wide variety of social services. Under this FY 2007 announcement, VETS anticipates that up to $300,000 will be available for grant awards up to a maximum of $10,000 per event. However, if the event is held for one (1) day, the maximum amount is $7,000. VETS expects to award approximately thirty-seven (37) grants. Applications for Stand Down funds will be accepted from State Workforce Agencies and State and local Workforce Investment Boards, Veterans Service Organizations (VSO), local public agencies, and non-profit organizations, including community and faith-based organizations. VETS is not authorized to award these grant funds to organizations that are registered with Internal Revenue Service (IRS) as a 501 (c) (4) organization.

DATES: All Stand Down grant requests must be received by the appropriate State Director for Veterans' Employment and Training (DVET) who serves as the Grant Officer Technical Representative (GOTR) no later than 60 days prior to the event and postmarked no later than June 30, 2007, for events that occur on or prior to November 30, 2007. Events occurring after November 30, 2007, application will be accepted, and awarded as next year's federal appropriations or continuing resolution funding becomes available.

ADDRESSES: Applications for Stand Down grant funding are to be submitted to the appropriate State DVET/GOTR. Address and contact information for each State DVET/GOTR can be found at: *http://www.dol.gov/vets/aboutvets/contacts/main.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Stand Down is a military term referring to an opportunity to achieve a brief respite from combat. Troops would assemble in a base camp to receive new clothing, hot food, and a relative degree of safety before returning to the front. Today more than 160 organizations across the country partner with local businesses, government agencies, and community- and faith-based service providers to hold Stand Down events for homeless veterans and their families in the local community.

Each year, the Assistant Secretary for Veterans' Employment and Training awards Homeless Veterans' Reintegration Program (HVRP) grants to programs that enhance employment and training opportunities and/or promote self-sufficiency for homeless veterans. Residual HVRP funds can be awarded as grants to organizations sponsoring Stand Down events for homeless veterans.

The critical services provided at a Stand Down are often the catalyst that enables homeless veterans to reenter mainstream society. Some of the services available at these events include temporary shelter, showers, haircuts, meals, clothing, hygiene kits, medical examinations, immunizations, legal advice, State identification cards, veterans benefit information, training program information, employment services, and referral to other supportive services.

Stand Down grant funds must be used to enhance employment and training opportunities or to promote self-sufficiency for homeless veterans. The funds may be used to support activities such as:

- The purchase of food, bottled water, clothing, sleeping bags and hygiene care kits;
- Rental of facilities and/or tents;
- Payment for special one-time electricity costs, equipment rentals, advertising, event posters, portable toilets, janitorial/kitchen supplies, and communications/internet access;
- The hiring of security personnel;
- Transportation of homeless veterans to and from Stand Down events; and
- Other items and services as appropriate.

Stand Down grant funds may not be used to purchase special monogrammed tee shirts, pen sets, specialty hats (unless for cold weather use), military and veteran type patches, and memento gifts for staff members/visitors/volunteers.

II. Award Information

The maximum amount that can be awarded to support a local Stand Down event is $10,000 per year, per event. If the event is held for one (1) day, the maximum amount that can be awarded is $7,000.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants will generally fall into one of the following categories: State and local Workforce Boards, Veteran Service Organizations, local public agencies, and non-profit organizations including community and faith-based organizations. Organizations registered with the Internal Revenue Service as a 501(c)(4) organization are not eligible.

2. Cost Sharing or Matching

Cost Sharing and matching funds are not required. However, we do encourage grantees to maximize the resources available to the Stand Down event and its participants.

3. Other Eligibility Requirements

Applicant Registration Requirements

A. All applicants for Federal funding are required to include a Dun and Bradstreet Number (DUNS) with their application. Applicants can obtain a DUNS number through the following Web site: *http://www.dunandbradstreet.com/* or by phone at 1–866–705–5711.

B. After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration (CCR) through the following Web site: *http://www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423.

After registration, grant applicants will receive a confirmation number. Grantee listed Point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

IV. Application Content

All applications for Stand Down funding must include:

1. Applicant letter requesting Stand Down funds (original signed in blue ink);
2. Application for Federal Assistance, Standard Form (SF) 424 (original signed in blue ink);
3. SF–424A, Budget Information—Non-Construction Programs; *SF–424 and SF–424A forms can be downloaded from the following Web site: http://www.grants.gov*
4. Budget Narrative describing each planned expenditure listed on the SF 424A. The description should provide the methodology used in determining the cost estimates such as quantity and if the item will be purchased or rented. Will the items be utilized by the participant or assist the volunteer(s) at the event?;
5. Demonstrate and document Stand Down Activities and develop a timeline for completion of activities. For Stand Down events that occur on or after July 1st, grant applicants must demonstrate and document planning activities prior to the end of the Fiscal Year (September 30th);
6. Original signed Assurances and Certifications Signature Page;
7. Complete the Survey on Ensuring Equal Opportunity for Applicants (see Appendix D);
8. A copy of the Central Contractor Registration (CCR) confirmation number. Please do not send the Trader Partnership Identification Number (TPIN) (see Section III.3.A.);
9. Letters of support, particularly from the local One-Stop Career Centers and/or Disabled Veterans' Outreach Program Specialists (DVOPs) and Local Veterans' Employment Representative (LVER) staff, the Department of Veterans Affairs, Department of Housing and Urban Development (HUD) or the local Continuum of Care (COC), Veterans' Service Organizations (VSO), State and local government agencies, local businesses, local non-profit organizations including community-based and faith-based organizations, etc; when applicable; and
10. A copy of the Internal Revenue Service documentation indicating approval of non-profit status (for example: 501(c)(3), 501(c)(19), etc.) as required to verify eligibility when claiming non-profit status.

V. Award Administration Information

Stand Down funding is a non-competitive grant awarded on a first-come, first-served basis until available residual funding is exhausted. Funding is subject to approval by the Grant Officer. If approved, the grantee will receive a grant award document and financial form to complete in order for USDOL Office of Financial Management to set-up an account in the Health and Human Services, Payment Management System (HHS/PMS) to electronically draw down funds.

If awarded funds, the grantee must submit the completed HHS/PMS financial forms directly to the USDOL, Division of Financial Management Operations in order to electronically draw down funds. The financial forms should be sent via FedEx, UPS, or other non-U.S. Postal Service provider to avoid processing delays. If grantee has previously set-up an electronic HHS/PMS account, additional awarded funds will be added into that existing bank account unless otherwise notified in writing. Questions or problems relating to the HHS/PMS paperwork or processes should be referred to the USDOL Office of Financial Management at (202) 693–4479.

Upon receipt of grant award financial documents, HHS/PMS will forward a packet of instructions to the grantee on how to set up a payment account. After setting up the account, the grantee will be able to draw down funds to reimburse approved expenses already incurred and to cover approved expenses that will be paid within three (3) days of the draw down. Funds requested for draw down through the HHS/PMS are directly deposited into the account within 24 hours of the request.

Since grantees may draw funds down in more than one quarter, up to and after the date of the Stand Down event, grantees are required to complete a PSC Federal Cash Transaction Report (PS 272) no later than 45 days after the end of each quarter in which grantees receive all or part of their grant award (February 14th, May 15th, August 14th, and November 14th). Instructions for completing this requirement are provided in the HHS/PMS information packet. Grantees are to print hard copies of all PSC 272s submitted to provide with an Activity and Expenditure Report that will be submitted after the Stand Down event.

VI. Required Post-Event Reporting

No later than 45 calendar days after the Stand Down event, grantees must submit the Stand Down Activity and Expenditure Report to the appropriate DVET/GOTR and to the USDOL Procurement Services. If grantees experience any delay in submitting this report, they should immediately contact their DVET/GOTR and provide a justification to request an extension.

The following documents will be needed to complete the Stand Down Activity and Expenditure Report:

- An original signed invoice or list of all items purchased with grant funding;
- Original sales receipts of items purchased with USDOL–VETS funding;
- Comparison of planned activities and expenditures versus actual activities and expenditures;
- SF 269A, Financial Status Report (short form) (available for download at *http://www.grants.gov*;
- The Stand Down After Action Report (see Appendix E), which can also be provided by the DVET/GOTR; and
- Copies of all PSC 272s that were submitted to HHS/PMS.

To prevent processing delays and/or the need to recoup over payments, grantees are to submit the Stand Down Activity and Expenditure Report to the appropriate DVET/GOTR prior to sending the originals to Procurement Services. The DVET/GOTR will review the report to ensure it is complete and accurate and that all expenditures were appropriate and allowable.

After the DVET/GOTR reviews the Stand Down Activity and Expenditure Report for completeness and accuracy,

grantees are to distribute copies of the Activity and Expenditure Report as follows:

• The original SF 269A, signed invoice or list of expenditures and the Stand Down After Action Report is mailed to: U.S. Department of Labor, Procurement Services Center, Room S–4307, Attn: Cassandra Mitchell, 200 Constitution Avenue, NW., Washington, DC 20210.

• Original sales receipts of items purchased with USDOL–VETS funding, a copy of the SF 269A, signed invoice or list of expenditures, comparison of actual versus planned activities and expenditures, Stand Down After Action Report, and copies of all PSC 272s sent to HHS/PMS is to be submitted to the appropriate DVET/GOTR.

If the DVET/GOTR does not recommend approval of a particular expenditure, he/she will notify the grantee in writing with an explanation for the disapproval and instruct grantee to electronically return the funds within 15 calendar days to the HHS/PMS account if already drawn down. All FY 2007 Stand Down awarded funds must be electronically drawn down by no later than November 30, 2007. If Stand Down funds are not electronically drawn down by the grantee within 90 days following the above stated due date, the USDOL may reallocate these funds for other purposes accordingly.

Any grantee who fails to comply with guidance set forth in the Stand Down Special Grant Provisions and reporting requirements will not be considered favorably from any future funding from U.S. Department of Labor Veterans' Employment and Training Service.

VII. Agency Contacts

Questions regarding this announcement should be directed to the Director for Veterans' Employment and Training/GOTR in your State. Contact information for each DVET/GOTR is located in the VETS Staff Directory at the following webpage: *http://www.dol.gov/vets/aboutvets/contacts/main.htm* or access the directory from the agency Web site at *http://www.dol.gov/vets*.

VIII. Other Information

Current competitive HVRP grantees are not eligible for a separate non-competitive Stand Down grant award as described in this announcement. Current competitive HVRP grantees are authorized to utilize existing funds for Stand Down purposes.

Appendices: (Located on U.S. Department of Labor, Veterans' Employment and Training Service Webpage *http://www.dol.gov/vets* follow link for 2007 Stand Down Grants and Required Forms listed under announcements.)

Appendix A: Application for Federal Assistance SF–424
Appendix B: Budget Information Sheet SF–424A
Appendix C: Certifications and Assurances Signature Page
Appendix D: Survey on Ensuring Equal Opportunity for Applicants
Appendix E: Stand Down After Action Report

Signed at Washington, DC, this 23 day of May, 2007.

Cassandra R. Mitchell

Grant Officer.

[FR Doc. E7–10258 Filed 5–29–07; 8:45 am]

BILLING CODE 4510–79–P

LIBRARY OF CONGRESS

Copyright Office

Notice of Roundtable Regarding the Section 115 Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice announcing public roundtable.

SUMMARY: The Copyright Office announces a public roundtable discussion concerning the use of the statutory license to make and distribute digital phonorecords, including for a limited period, and to make phonorecords that facilitate streaming. This discussion is an adjunct to the comments filed in the current rulemaking exploring these issues. The roundtable will also address the statutory requirement to provide notice of intention to obtain the compulsory license.

DATES: The public roundtable will be held in Washington, DC on June 15, 2007, in the Copyright Office Hearing Room at the Library of Congress, Room LM–408, 4th Floor, James Madison Building, 101 Independence Avenue, SE, Washington, DC from 9:30 a.m. to 4:30 p.m. Requests to participate or observe the roundtable shall be submitted in writing no later than close of business on June 6, 2007.

ADDRESSES: Requests to observe or participate in the roundtable should be addressed to Joe Keeley, Attorney Advisor, and may be sent by mail or preferably by e–mail to *musiclicense@loc.gov. See* **SUPPLEMENTARY INFORMATION** for alternative means of submission and filing requirements.

FOR FURTHER INFORMATION CONTACT: Joe Keeley, Attorney Advisor, or Stephen Ruwe, Attorney Advisor, Office of the General Counsel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code provides a statutory license for the making and distribution of phonorecords of nondramatic musical works. Historically, the statutory rates have established the ceiling for the mechanical licenses issued in the marketplace. In 1995, Congress passed the Digital Performance Right in Sound Recordings Act, Pub. L. No. 104–39, 109 Stat. 336, which amended section 115 to include the right to distribute a phonorecord by means of a ''digital phonorecord delivery'' (''DPD''). The statute includes a definition of a DPD and explains the process for establishing rates for these phonorecords. In addition, it acknowledges the existence of additional DPDs ''where the reproduction or distribution of the phonorecord is incidental to the transmission which constitutes the [DPD]'' 17 U.S.C. 115(c)(3)(D), and requires that a separate rate be set for these phonorecords. However, the law does not identify which DPDs can be classified as incidental or provide any guidelines for making this decision.

For this reason, the Copyright Office published a Notice of Inquiry in the **Federal Register**, 66 FR 14099 (March 9, 2001), requesting comment on the interpretation and application of the mechanical and digital phonorecord compulsory license, 17 U.S.C. 115, to certain digital music services. The Recording Industry Association of America (''RIAA'') had suggested in its petition for this rulemaking that section 115 be interpreted in such a way as to cover all reproductions made to operate services offering On–Demand Streams and Limited Downloads, as defined in the March 9, 2001, notice. At about the same time, RIAA entered into separate negotiations with the National Music Publishers Association and the Harry Fox Agency, Inc. and reached an agreement concerning several of the issues involved in the original Notice of Inquiry. Because this side agreement addressed the key issues raised in the earlier Notice of Inquiry, the Copyright Office sought additional comments on

the original questions. 66 FR 64783 (December 14, 2001).

The incidental DPD debate has been hotly contested and, along with the reform of section 115, the subject of numerous hearings before the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary (March 23, 2007; May 16, 2006; June 21, 2005; and March 11, 2004) and the Senate Judiciary Committee, Subcommittee on Intellectual Property (July 12, 2005). Yet, in spite of all the attention, the legal issues remain unresolved. Consequently, the Office is again focusing on the rulemaking process and is hosting the roundtable discussion as a way to refresh the existing record in order to ascertain the scope of the 115 license in relation to certain digital music services.

In addition to the issues raised in the March 9, 2001, Notice of Inquiry, on August 28, 2001, the Copyright Office issued a Notice of Proposed Rulemaking to amend the rules associated with service of a Notice of Intention to Obtain Compulsory License (''Notice'') under section 115. 66 FR 45241 (August 28, 2001). The purpose of the amendments was to streamline the notification process and make it easier for the licensee to serve the copyright owner with Notice for multiple musical works. After considering the comments received in that rulemaking proceeding, the Office adopted regulations that allow, among other things: service on an agent; the listing of multiple works on a single Notice; the filing of a single Notice to cover all possible configurations, including those not listed specifically on the Notice; and use of an address other than the one listed in Copyright Office records. 69 FR 34578 (June 22, 2004).

In issuing its Final Rule, the Office recognized that the purpose of the Notice requirements in section 115 of the Copyright Act, is ''merely to give notice to the copyright owner of a licensee's intention to use the copyright owner's musical work to make and distribute phonorecords subject to the terms of the section 115 compulsory license.'' 69 FR 34581 (June 22, 2004). The Office now seeks to address whether there are compelling reasons to further streamline the Notice process.

Roundtable Topics

The Office is identifying a number of key issues for discussion and encourages the participation of persons who can address these issues from the perspectives of law, policy and the practical needs of the affected industries. The Office also encourages input from persons who can speak to the technological aspects involved in the making of a digital transmission, especially with respect to the making of specific reproductions during the course of a transmission. In addition, the Office invites participants to identify any other actions they believe the Office should undertake, pursuant to its regulatory authority, to make the section 115 license more workable and/or efficient.

Topic 1: How do ''Limited Downloads'' Fit Within the Scope of the Section 115 License?

The March 9, 2001, Notice of Inquiry addressed a petition for clarification of the status of Limited Downloads within the section 115 license. The petitioning party, the RIAA, characterized a Limited Download as an on–demand transmission of a time–limited or other use–limited download to a storage device (such as a computer's hard drive), using technology that causes the downloaded file to be available for listening only either during a limited time or for a certain number of times. The Notice of Inquiry, as well as the resulting comments, focused largely on whether Limited Downloads fit within the scope of section 115 as either incidental digital phonorecord deliveries (''incidental DPDs''), as provided for in 17 U.S.C. 115(c)(3)(D), or distributions of phonorecords by rental lease or lending, as provided for in 115 U.S.C. 115(c)(4). Since a DPD is defined as an ''individual delivery of a phonorecord which results in a specifically identifiable reproduction,'' and since a Limited Download would appear to be the specifically identifiable reproduction that is the end result of the DPD, could that same Limited Download also be considered ''incidental to the transmission which constitutes the digital phonorecord delivery?'' Can a DPD in fact result in a reproduction which is incidental to itself or should a Limited Download be characterized as a general DPD,[1] albeit potentially valued at a different rate. The Office welcomes further discussion on each of these approaches.

In considering whether a Limited Download can be viewed as an incidental DPD, the Office takes note of the fact that the language of 17 U.S.C. 115(c)(3)(D) identifies an incidental DPD as a reproduction or distribution of a phonorecord that is incidental to the transmission which constitutes the digital phonorecord delivery. This would seem to indicate that an incidental DPD cannot exist without an underlying DPD. Given this condition, could a Limited Download ever be considered an incidental DPD? If the Limited Download is considered a general DPD, are there also incidental DPDs made in the course of delivering the Limited Download?

Alternatively, reliance on the section 115 provision for rental, lease or lending of a phonorecord as a way to clear the rights to the use of the musical work in Limited Downloads is not self–evident. A plain reading of the statutory language[2] seems to envision that any coverage provided by the section 115 license for phonorecord rental, lease or lending is predicated on a further distribution of a phonorecord already in existence. Furthermore, use of the provision appears to require a licensee to make two payments, once under 17 U.S.C. 115(c)(2) for the making and distribution of the phonorecord and again for subsequent acts of rental, lease or lending of that phonorecord. It is also worth noting that royalty determinations for every such act of rental, lease or lending are dependent upon the revenue received by the licensee for the underlying reproduction and distribution.[3] As a matter of practicality, it seems the rental, lease or lending provision is uniquely suited to traditional, non–digital, uses of the

[1] Section 115(d) defines a ''digital phonorecord delivery'' as ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real–time, non–interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.''

[2] ''A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.'' 115 U.S.C. 115(c)(4)

[3] *Id.*

section 115 license, in which a phonorecord is not parted with permanently, but instead returned to the licensee who may rent it multiple times. The Office welcomes alternative views on application of the section 115 provision for rental, lease or lending of a phonorecord to Limited Downloads.

Topic 2: Does ''Streaming'' Fit Within the Scope of the Section 115 License?

The March 9, 2001, Notice of Inquiry sought clarification of the status of streaming,[4] specifically with respect to ''on–demand streams'' within the section 115 license. In the previous Notice of Inquiry, the Office recognized that streaming necessarily involves a making of a number of copies of the musical work—or portions of the work––along the transmission path to accomplish the delivery of the work. Copies are made by the computer servers that deliver the musical work (variously referred to as ''server,'' ''root,'' ''encoded,'' or ''cache'' copies), and additional copies are made by the receiving computer to better facilitate the actual performance of the work (often referred to as ''buffer'' copies). Some of these copies are temporary; some may not necessarily be so. 66 FR 14101 (March 9, 2001).

Similar to its consideration with regard to Limited Downloads, the Office welcomes further information regarding whether the reproductions made in the course of streaming enjoy coverage under the section 115 provisions as incidental DPDs. Again, the Office takes note of the fact that the language of 17 U.S.C. 115(c)(3)(D) identifies an incidental DPD as a reproduction or distribution of a phonorecord that is incidental to the transmission which constitutes the digital phonorecord delivery.

The Office, therefore, seeks further information as to whether the reproductions made to facilitate a stream result in a DPD as defined in section 115(d),[5] focusing on the requirement that the DPD must result in ''a specifically identifiable reproduction by or for any transmission recipient.'' Does streaming result in such specifically identifiable reproductions? And if a DPD is made in the course of streaming, does the streaming process also produce incidental DPDs for purposes of section 115? The Office welcomes the participation of individuals who can provide technical expertise in considering these questions.

Topic 3: Do Server Copies Necessary to Transmit Limited Downloads or Streams Fit Within the Scope of the Section 115 License?

The Office welcomes further information as to whether server copies, or other copies not actually delivered to the public for private use, fit within the scope of the section 115 license, perhaps as incidental DPDs. The language of 17 U.S.C. 115(c)(3)(D), which identifies an incidental DPD *as a reproduction or distribution* of a phonorecord that is incidental to the transmission which constitutes the digital phonorecord delivery could indicate that server copies may be considered incidental DPDs. On the other hand, the section 115(a)(1) requirement that ''a person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use'' may cut against consideration of a server copy as an incidental DPD, at least in cases where the server copy is used for purposes of streaming. Does the fact that the law indicates that an incidental DPD can be either a reproduction or a distribution minimize the importance of the 115(a)(1) requirement or nullify it in the case of an incidental DPD?

Topic 4: Notice Requirements

The Office amended its regulations governing Notice several years ago to allow service on agents of copyright owners as a way to make the license more functional. 69 FR 34578 (June 22, 2004). However, the section 115 license remains largely unused by most parties to previous rulemaking proceedings who expressed an interest in employing it. The Office, therefore, seeks information as to whether there are compelling reasons to further streamline the Notice process.

Specifically, the Office seeks further information on the benefits and burdens of the existing Notice requirements; the potential to eliminate information (data fields) currently required in a Notice; and services and technology that may be employed by either the Office or third parties to assist in the Notice process. The Office also seeks further information on the following previously suggested, yet heretofore unimplemented, methods for streamlining the Notice process:

a.Filing of ''Universal'' or ''Database'' Notices.

Current regulations allow that a Notice may address the works of multiple copyright owners only so long as such Notice is served on an agent of a copyright owner, and all of the works addressed by such Notice are owned or co–owned by copyright owners who have authorized their agent to accept Notice on their behalf. The Office seeks further information concerning additional changes to allow the filing of a single, universal ''Database'' Notice upon agents of copyright owners. Such a ''Database'' Notice would be effective only to the extent it addresses works owned or co–owned by the copyright owners represented by the agent on whom the Notice is served. Similar proposals regarding ''Database'' Notices have been suggested in previous proceedings. One such proposal put forward by DiMA, would have allowed the licensee, in the case of electronic submissions, to serve directly on copyright owners a single ''Database'' Notice listing multiple works by multiple owners. 69 FR 11571 (March 11, 2004).

The Office undertakes further inquiry regarding service of a single ''Database'' Notice to consider another proposal similar to DiMA's that would allow service of ''Database'' Notices on agents of copyright owners, as opposed to service of ''Database'' Notices directly on copyright owners. In its earlier consideration for allowing ''Database'' Notices, the Office found that section 115 ''does not anticipate that the copyright owner should have to search a licensee's universal database Notice to determine which of the copyright owner's works a licensee intends to use.'' 69 FR 11571 (March 11, 2004). In seeking further information regarding service of a ''Database'' Notice on agents of copyright owners, the Office recognizes the continually advancing search and sort capabilities of word processing, spreadsheet, and other electronic data management applications that are in increasingly wide use. Given such capabilities, would it be reasonable to require agents of copyright owners served with Notice to provide not only the name and address of the person to whom Statements of Account and monthly royalties are to be made, but also information regarding the works owned by the copyright owners the agent represents? And, assuming for purposes of this discussion copyright owners can provide this information, can and should the Office issue regulations under section 115 to allow service of a blanket ''Database'' Notice on a copyright owner (or an agent of one or more copyright owners) that does not specify any particular musical work, but simply states that the user intends to

[4] While the March 9, 2001, Notice of Inquiry set out to address ''On-Demand Streams'' only, the Office will consider all types of streaming, regardless of their interactive nature, in determining their place within the scope of the section 115 license, which unlike the section 114 license makes no distinction between interactive and noninteractive uses of copyrighted works.

[5] *See supra* n.1.

use the section 115 license to make and distribute DPDs for all musical works owned by that particular copyright owner (or all copyright owners represented by that particular agent)?

The Office takes note of the actions among interested parties to develop data exchange standards for information relating to media content, exemplified by the establishment of ''Digital Data Exchange.'' (*See www.ddex.net.* Are there additional emerging business solutions that may efficiently aid the administration of ''Database'' Notices? Would the adoption of a uniform standard for the exchange of digital data allow for the use of a universal ''Database'' Notice? Are there legal impediments to allowing service of a universal ''Database'' Notice on agents of copyright owners?

b.Authority of Agents

Current regulations allow a potential licensee to choose to serve Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. Previous rulemaking proceedings have considered that the regulations may set a higher standard for establishing an agency relationship than that applied as a matter of agency law. 69 FR 11568 (March 11, 2004). Currently, the regulations provide for service of the Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. The Office seeks further input as to whether an agent with authority to accept Notices includes general registered agents of copyright owners of the sort that may be required as a condition of enjoying corporate or other similar legal status by copyright owners in their respective jurisdictions. And if not, whether the regulations should be so amended.

Participation and Filing Requirements

Parties wishing to observe or participate in the roundtable discussion must submit a written request no later than close of business on June 6, 2007. Requests to observe the roundtable or to participate as a member of the roundtable must indicate the following information:

1. The name of the person, including whether it is his or her intention to observe the roundtable or to participate as a member of the roundtable;

2. The organization or organizations represented by that person, if any;

3. Contact information (address, telephone, and e–mail); and

4. Information on the specific focus or interest of the observers or participants (or his or her organization) and any questions or issues they would like to raise.

The capacity of the room in which the roundtable will be held is limited. If the Office receives so many requests that the room's capacity is reached, attendance will be granted in the order the requests are received.

The preferred method for submission of the requests to observe or participate is via email. If sent by e–mail, please send to musiclicense@loc.gov. Alternatively, requests may be delivered by hand or submitted by mail.

If hand delivered by a private party, an original and five copies of the request to observe or participate should be brought to Room 401 of the James Madison Building between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, Library of Congress, James Madison Building, LM–401, Washington, DC, 20559–6000.

If delivered by a commercial courier, an original and five copies of a request to observe or participate in the roundtable must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 401, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a request to observe or participate should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Please be aware that delivery of mail via the U.S. Postal Service or private courier is subject to delay. Therefore, it is strongly suggested that any request to observe or participate be made via email.

Dated: May 24, 2007

Marybeth Peters,

Register of Copyrights.

[FR Doc. E7–10363 Filed 5–29–07; 8:45 am]

BILLING CODE 1410–30–S

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of May 28, June 4, 11, 18, 25, July 2, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 28, 2007

Tuesday, May 29, 2007

1:30 p.m. NRC All Hands Meeting (Public Meeting) (*Contact:* Rickie Seltzer, 301–415–1728), Marriott Bethesda North Hotel, Salons A–E, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, May 30, 2007

9:25 a.m. Affirmation Session (Public Meeting) (Tentative): a. USEC Inc. (American Centrifuge Plant), LBP–07–06 (Initial Decision Authorizing License), Geoffrey Sea Letter ''in preparation of late-filed contentions'' (Tentative).

b. Shieldalloy Metallurgical Corp. (Licensing Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40–7102–MLA, Appeal of Loretta Williams from LBP–07–05 (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Materials (Public Meeting) (*Contact:* Duane White, 301–415–6272).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

10:15 a.m. Discussion of Security Issues (Closed–Ex.1).

Thursday, May 31, 2007

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Reactors (Public Meeting) (*Contact:* Mark Tonacci, 301–415–4045).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 4, 2007—Tentative

Thursday, June 7, 2007

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (*Contact:* Frank Gillespie, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 11, 2007—Tentative

There are no meetings scheduled for the Week of June 11, 2007.

Week of June 18, 2007—Tentative

There are no meetings scheduled for the Week of June 18, 2007.

Week of June 25, 2007—Tentative

There are no meetings scheduled for the Week of June 25, 2007.

Week of July 2, 2007—Tentative

There are no meetings scheduled for the Week of July 2, 2007.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 24, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–2687 Filed 5–25–07; 11:56 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Safety Evaluation and Model License Amendment Request on Technical Specification Improvement Regarding Use of the Improved Banked Position Withdrawal Sequence for General Electric Boiling Water Reactors Using the Consolidated Line Item Improvement Process; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** Notice on May 23, 2007 (72 FR 29004). The notice makes a Model Safety Evaluation, Model License Amendment Request, and Model No Significant Hazards Determination available to licensees as a means to make changes to Standard Technical Specifications. This action is necessary to correct an erroneous ''Action'' item.

FOR FURTHER INFORMATION CONTACT: Matthew Hamm, Reactor Engineer, Office of Nuclear Reactor Regulation, telephone (301) 415–1472.

SUPPLEMENTARY INFORMATION: On page 29004, in the third column, the **ACTION:** item is changed from ''Request for comment'' to read ''Notice of availability.''

Dated at Rockville, Maryland, this 23rd day of May, 2007.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E7–10355 Filed 5–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. Redacted; License Nos. Redacted; EA–07–082]

In the Matter of Certain 10 CFR Part 50 Licensees Who Transport Spent Nuclear Fuel Under the Provisions of 10 CFR PART 71; Order Modifying Licenses (Effective Immediately)

I.

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.[1] These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current

[1] Attachments 1 and 2 contain safeguards information and will not be released to the public.

threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 71, and 73, *it is hereby ordered,* effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by June 22, 2007, unless otherwise specified in Attachment 2, or before the first shipment after May 23, 2007, whichever is earlier.

B.1. All licensees shall, within twenty (20) days of the date of this Order, unless otherwise specified in Attachment 2, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent nuclear fuel must notify the Commission, within twenty (20) days of the date of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

1. All licensees shall report to the Commission when they have achieved or plan to achieve full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation, under 10 CFR 50.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the

provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 23rd day of May, 2007.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–10349 Filed 5–29–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 5805]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Wednesday, June 13, 2007 beginning at 1 p.m. in Room 4517 of the U.S. Department of State, Harry S Truman Building, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2007 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in connection with the ''Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, as amended.'' The agenda will include opening statements by the Chairman and members of the committee, and, within the committee, discussion, approval and recommendation that the Department of State negotiate grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines contained in the call for applications published in Grants.gov on November 22, 2006. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however attendance will be limited to the seating available. Entry into the Harry S Truman Building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Office at the U.S. Department of State on (202) 647–0243 by Friday, June 8, 2007, providing the following information: Full Name, Date of Birth, Driver License Number, Country of Citizenship, and any requirements for special needs. All attendees must use the 2201 C Street entrance and must arrive no later than 12:45 p.m. to pass through security before entering the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

Dated: May 21, 2007.

Susan H. Nelson,

Acting Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. E7–10338 Filed 5–29–07; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice 5818]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for a meeting of the Organization of American States Inter American Telecommunication Commission (CITEL) Permanent Consultative Committee II (Radiocommunication) which will prepare for the International Telecommunication Union World Radiocommunication Conference (WRC07).

The ITAC will meet on June 5, 12, 19, and 26 from 10-noon EDT at various locations in Washington, DC to prepare for the meeting of CITEL PCC.II which will make final regional preparations for the ITU WRC07. The actual locations and other meeting particulars will be made available on the ITAC-R reflector or from the secretariat, <*minardje@state.gov*>. The meetings are open to the public.

Dated: May 17, 2007.

Cecily Holiday,

Foreign Affairs Officer EEB/CIP, Department of State.

[FR Doc. E7–10343 Filed 5–29–07; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Notice; Meeting No. 07–03

TIME AND DATE: 9 a.m. (CDT), May 31, 2007, Trotter Convention Center, Columbus Room Auditorium, 123 5th Street South, Columbus, Mississippi.

STATUS: Open.

Agenda

Old Business

Approval of minutes of March 30, 2007, Board Meeting.

New Business

1. President's Report.
2. Report of the Finance, Strategy, and Rates Committee.
   - A. Strategic Plan.
   - B. Customer items.
   - i. Annual product reviews.
   - a. Limited Interruptible Power/ Limited Firm Power.
   - b. Variable Price Interruptible Power.
   - c. Proposed transmission and ancillary service rates under the Transmission Service Guidelines.
   - ii. Product revisions.
   - a. 5-minute interruptible.
   - b. Real Time Energy.
   - c. Enhanced Growth Credit eligibility requirements relating to nonconforming load.
   - iii. Individual customer contracts.
   - a. Revised pricing under a contract with a directly-served customer.
   - b. Extension of Competitive Indexed Rate arrangements with an industrial customer of North Georgia Electric Membership Corporation.
3. Report of the Operations, Environment, and Safety Committee.
   - A. Authorization to enter into long-term transmission service agreements in accordance with TVA Transmission Service Guidelines.
   - B. Authorization to enter into transmission service agreements to supply TVA's isolated native load.
   - C. Authorization to enter into six term coal supply agreements.
   - D. Board Practice—Independent Nuclear Safety Advisors.
4. Report of the Audit and Ethics Committee.
5. Report of the Human Resources Committee.
   - A. Compensation plan.
6. Report of the Community Relations Committee.
   - A. Section 26a permit appeals process.
   - B. Proposed appointments to the Regional Resource Stewardship Council and designation of Tom

Littlepage to serve as the chairperson.

C. Public auction sale of approximately 17.7 acres of property in Tishomingo County, Mississippi, for industrial purposes.

D. Sale of approximately 18 acres of transmission line rights to Weakley County, Tennessee.

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: May 24, 2007.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 07–2691 Filed 5–25–07; 12:30 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15660]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces that the Information Collection Request (ICR) abstracted below which will be forwarded to the Office of Management and Budget (OMB) for renewal. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on Wednesday, February 14, 2007 (Vol. 72, FR 7110–7111). No comments were received.

DATES: Comments on this notice must be received by June 29, 2007 and sent to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or *oira_submission@omb.eop.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Vivian Jones, Office of the Secretary, Resource Directorate Office, S.3–6, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–0283 (voice) 202–366–3393 (fax) or at *Vivian.jones@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled Service.

OMB Control Number: 2106–0044.

Affected Public: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Frequency of response: Monthly.

Estimated Total Burden on Respondents: 4,789 Annual hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated 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.

Issued in Washington, DC, on May 23, 2007.

John DiLuccio,

Director, Resource Directorate.

[FR Doc. E7–10313 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 18, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28248.

Date Filed: May 15, 2007.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 535—Resolution 010r, TC3 Special Passenger Amending Resolution, between Malaysia (MY) and Hong Kong SAR (HK) (Memo 1094), Intended effective date: 25 May 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–10300 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 18, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28233.

Date Filed: May 14, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 2007.

Description: Application of AirBridgeCargo Airlines Limited requesting a foreign air carrier permit to engage in Boeing 747 all-cargo scheduled and charter operations between the Russian Federation and the United States.

Docket Number: OST–2005–21157.

Date Filed: May 4, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 2007.

Description: Application of Executive Airlines, S.L. d/b/a European Executive Airlines (''European Executive'') requesting an exemption and an amended foreign air carrier permit authorizing European Executive to conduct services using small aircraft, in addition to the charter services authorized under its existing foreign air carrier permit, as of March 30, 2008: (a) Charter foreign air transportation of persons, property and mail from points behind EU Member States, via the EU Member States and intermediate points to any point or points in the United States and beyond; (b) charter foreign air

transportation of persons, property and mail between any point or points in the United States and any point or points in the European Common Aviation Area (''ECAA''); and (C) other charters (between non-EU/ECAA third countries and the United States, and otherwise) in accordance with 14 CFR Part 212.

Docket Number: OST–2003–14579.

Date Filed: May 18, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 8, 2007.

Description: Application of Republic Airline Inc. d/b/a Republic Airlines (''Republic'') requesting an amendment of its certificate of public convenience and necessity to remove Condition 4, which limits Republic's scheduled passenger authority to operations conducted under fee-for-service agreements with major U.S. air carriers.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–10299 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in New Hampshire

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions of FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are found within the meaning of 23 U.S.C. 139(l)(l). These actions relate to a proposed highway project, Interstate 93 beginning at the Massachusetts State Line in Salem, and proceeding northerly 19.8 miles to the junction of I–293 in Manchester in Rockingham and Hillsborough Counties, State of New Hampshire. These actions grant licenses, permits, and approval of the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(l). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 26, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Kathleen O. Laffey, Division Administrator, Federal Highway Administration, 19 Chenell Dr. Suite One, Concord, NH, 03301, Office Hours: 8 a.m. to 4:30 p.m., (603) 228–0417, e-mail: *NewHampshire.FHWA@fhwa.dot.gov.* For USACE: Christine A. Godfrey, Chief, Regulatory Division, NE District, 696 Virginia Road, Concord, MA, 01742–2751, Office Hours: 7:30 a.m. to 4 p.m., (978) 318–8335, e-mail: *christine.a.godfrey@usace.army.mil.* For NHDOT: William J. Cass, P.E., Assistant Director of Project Development, NH Department of Transportation, 1 Hazen Drive, PO Box 483, Concord, NH, 03302, Office Hours: 8 a.m. to 4 p.m., (603) 271–6152, *bcass@dot.state.nh.us.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing permits and approvals for the following highway project in the State of New Hampshire: Improvements to the Interstate 93 corridor between Salem and Manchester, New Hampshire, to improve the transportation efficiency and reduce safety problems associated with this approximately 19.8-mile segment of highway. The existing four-lane Interstate highway will be increased to eight lanes, improvements will be made at each of the five interchange locations along this segment of highway, and existing geometric deficiencies will be addressed. The FHWA project number is IM—IR–93–1(174)0, while the New Hampshire Department of Transportation (NHDOT) project number is 10418-C. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on April 28, 2004, in the FHWA Record of Decision (ROD) issued on June 28, 2005, and in other documents in the administrative record. The FEIS, ROD, and other documents in the Federal administrative record file are available by contacting the FHWA or the NHDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at: *http://www.rebuildingI93.com/content/overview.* The USACE decision and permit (USACE Permit No. 199201232/NAE–2004–233) are available by contacting USACE at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109].
3. Clean Air Act, 42 U.S.C. 7401–7671(q).
4. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].
6. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
7. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
8. Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]
9. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401).
10. E.O. 11990 Protection of Wetlands.
11. E.O. 11988 Floodplain Management.
12. E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 139(1)(1)

Issued on: May 23, 2007.

Kathleen O. Laffey,

Division Administrator, Concord, NH.

[FR Doc. E7–10357 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28090]

Hours of Service (HOS) of Drivers; American Pyrotechnics Association (APA) Application for an Exemption From the 14-Hour Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on the American Pyrotechnics Association's

(APA) application for an exemption from the prohibition against driving a commercial motor vehicle (CMV) after the 14th hour of coming on duty. The exemption for nine motor carriers would be applicable for a period beginning 7 days prior to, and 2 days immediately following Independence Day in 2007 and 2008. Fireworks personnel who operate CMVs in conjunction with fireworks shows celebrating Independence Day would be allowed to exclude off-duty and sleeper-berth time of any length in the calculation of the 14 hours. Drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour weekly limits. APA believes the exemption would achieve a level of safety equivalent to what would be provided by compliance with the 14-hour rule as it applies to other drivers of property-carrying vehicles.

DATES: Comments must be received on or before June 14, 2007.

ADDRESSES: You may submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2007–28090, using any of the following methods:

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001. *Telephone:* 202–366–4009. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, June 9, 1998, 112 Stat. 107) amended 49 U.S.C. 31315 and 31136(e) to provide authority to the Federal Motor Carrier Safety Administration (FMCSA) to grant exemptions from the motor carrier safety regulations. The FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

The FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the application, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption.

Application for an Exemption

The American Pyrotechnics Association (APA) has requested an exemption for nine member companies from FMCSA's prohibition against drivers of property-carrying CMVs operating such vehicles after the 14th hour of coming on duty (49 CFR 395.3(a)(2)). Fireworks personnel covered by the exemption would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour rule. Drivers would not be allowed to drive after the accumulation of 14 hours of on-duty time following 10 consecutive hours off duty. This exemption would be applicable to approximately 100 new drivers employed by the motor carriers identified in the appendix to this notice. A copy of the application is included in the docket referenced at the beginning of this notice.

On July 1, 2005, FMCSA published a notice in the **Federal Register** granting a similar exemption to APA for 72 member companies. The original exemption expired on July 7, 2006, and APA has requested a renewal for those original companies. That application for renewal is being evaluated separately by FMCSA, and notice of it is published elsewhere in today's edition of the **Federal Register**.

APA, a trade association representing the domestic fireworks industry, asserts that full compliance with the current hours-of-service (HOS) regulations during the brief period surrounding Independence Day imposes a substantial economic hardship on its members that operate fireworks for the public. This period is the busiest time of the year for these companies. APA members are engaged to stage multiple shows in celebration of Independence Day, during a compressed timeframe.

The member-company drivers that would be covered by the exemption are trained pyrotechnicians, each holding a commercial driver's license with a hazardous materials (HM) endorsement. These drivers transport fireworks and equipment to remote locations under demanding schedules. During the week before Independence Day, these companies are engaged to stage multiple shows in a very compressed period of time. To meet the press of business in this 1-week period under the current

HOS rules, companies would be required to hire a second driver for most trips. This would result in a substantial increase in the cost of these shows, and as a result, many shows would be cancelled. Alternatively, APA members would be forced to significantly decrease their engagements. In either case, these companies would have to decrease the number of shows they provide, thereby denying many Americans a primary component of their Independence Day celebration.

Method To Ensure an Equivalent or Greater Level of Safety

APA believes that the exemption will not adversely affect the safety of the motor carrier transportation provided by their member companies. Many APA member companies operated under the prior exemption for two years with no reports of incidents of any kind. Moreover, according to the APA, the exemption will enhance safety by decreasing the number of CMVs stationed with HM Division 1.3 and 1.4 products aboard at locations throughout the country. Under the exemption, CMVs will be able to return to their home base, which is a secured area for these types of products.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comments on APA's application for an exemption from the requirements of 49 CFR 395.3(a)(2) for these nine companies. FMCSA will consider all comments received by close of business on June 14, 2007. Comments will be available for examination in the docket listed at the beginning of this notice. The FMCSA will file comments received after the comment closing date in the public docket and will consider them to extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket other relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 23, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

Appendix to Notice of Application for Exemption by American Pyrotechnics Association From the 14-Hour Rule During 2007 and 2008 Independence Day Celebrations

APA MEMBERS TO BE COVERED BY EXEMPTION FROM 14 HOUR RULE IN HOURS OF SERVICE FOR DRIVERS REGULATION

Company name	Address	City, State, ZIP	DOT No.
Alpha-Lee Enterprises, Inc.	4111 FM 2351	Friendswood, TX 77546.	1324580
American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
Cartwright Fireworks, Inc.	1608 Keely Road	Franklin, PA 16323	882283
Entertainment Fireworks, Inc.	P.O. Box 7160	Olympia, WA 98507–7160.	680942
Fireworks Productions of Arizona, Ltd	17034 S. 54th Street	Chandler, AZ 85226	948780
Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
Skyworks, Ltd.	13513 W. Carrier Road	Carrier, OK 73727	1421047
Stellar Fireworks, Inc.	4440 Southeast Blvd.	Wichita, KS 67210	1349562

[FR Doc. E7–10275 Filed 5–29–07; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against a Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces a final agency action taken by the Federal Transit Administration (FTA) for the Dulles Corridor Metrorail Project, a public transportation project in the Washington, DC metropolitan area. The purpose of this notice is to announce the decision by FTA not to perform supplemental review under the National Environmental Policy Act (NEPA) on the subject project and to activate the limitation on any claims that may challenge this final agency action. This notice does not alter or extend the limitation period of 180 days for challenges of project decisions subject to a previous notice published in the **Federal Register** on December 4, 2006.

DATES: By this notice, FTA is advising the public of a final agency action subject to Title 23, United States Code (U.S.C.), section 139(l). Any claim seeking judicial review of the FTA action announced herein for the listed public transportation project will be barred unless the claim is filed on or before November 26, 2007.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Office of Planning and Environment, 202–366–1626, or Christopher Van Wyk, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken a final agency action for the public transportation project listed below. This notice describes the action taken for which the 180-day statute of limitations will apply. Nothing in this notice affects the FTA's previous decisions, or notice thereof, for this project. More specifically, the statute of limitations for the approvals documented in the project's November 17, 2006, amended Record of Decision and the environmental documents on which it is based will still expire on June 4, 2007, as noticed in the **Federal Register** on December 4, 2006 (71 FR 70449). This notice only applies to the discrete action taken by FTA at this time that is described below.

The project and action subject to this notice are:

Project name and location: Dulles Corridor Metrorail Project; metropolitan Washington, DC. *Project sponsor:* Virginia Department of Rail and Public Transportation, Washington Metropolitan Area Transit Authority (WMATA), and Metropolitan Washington Airports Authority. *Project description:* The project is an extension of the Washington regional Metrorail system in Fairfax and Loudoun Counties, Virginia. It will include approximately 23 miles of electrically-powered rapid rail transit operating in exclusive right-of-way with at-grade, aerial, and subway sections, 11 new

stations, parking facilities, new and improved yard and shop facilities, new rail vehicles, and related systems and equipment. The project has two phases, with the first phase extending from the existing Metrorail Orange Line near the West Falls Church Station through Tysons Corner to a temporary terminus at Wiehle Avenue in Reston. The second phase of the project will extend west of Wiehle Avenue to Dulles International Airport and eastern Loudoun County. Between Tysons Corner and the Airport, the project is generally aligned in the median of the Dulles International Airport Access Highway. *Final agency action:* FTA has reviewed information provided from various sources on the feasibility of using large-bore tunnel technology for the underground design option through the entire Tysons Corner commercial district. Based on its review, the FTA determined on May 18, 2007, that its decision during the National Environmental Policy Act (NEPA) process to reject an entirely underground design option through Tysons Corner remains valid and is unaffected by the information it has received on the availability of large-bore tunnel technology. Thus, FTA has decided that it is not necessary to perform a supplemental NEPA review of project alternatives at this time. Additional information on the recent submissions and the FTA decision that are described above may be obtained by contacting the individuals listed above.

Authority: 23 U.S.C. 139(l)

Issued on: May 23, 2007.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E7–10281 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2007–27231–2]

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

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

ACTION: **Federal Register** notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 14, 2007 (72 FR 7114).

DATES: OMB approval has been requested by June 29, 2007.

FOR FURTHER INFORMATION CONTACT: Samuel Daniel at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards (NVS–120), (202) 366–4921. *sam.daniel@dot.gov.* 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 571.116, Motor Vehicle Brake Fluids.

OMB Number: 2127–0521.

Type of Request: Extension of a currently approved collection. This request for an extension of a currently approved collection, if approved, will allow the Department of Transportation to continue to enforce the labeling requirements for motor vehicle brake fluid and hydraulic mineral oil containers as specified in FMVSS No. 116, *Motor Vehicle Brake Fluids.*

Abstract: Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids,* specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The label on a container of motor vehicle brake fluid or hydraulic system mineral oil is permanently attached, clearly states the contents of the container, and includes a DOT symbol indicating that the contents of the container meet the requirements of FMVSS No. 116. The label is necessary to help ensure that these fluids are used for their intended purpose only and the containers are properly disposed of when empty. Improper use, storage, or disposal of these fluids could represent a significant safety hazard for the operators of vehicles or equipment in which they are used and for the environment.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 7000 hours.

Estimated Number of Respondents: 200.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it prior to June 29, 2007.

Issued on: May 23, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 07–2678 Filed 5–29–07; 8:45 am]

BILLING CODE 4910–59–M

Federal Register

Wednesday,
May 30, 2007

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070430096–7096–01; I.D. 041307D]

RIN 0648–AU68

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards

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 implement Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 80 (hereinafter the ''Program'') primarily would allocate several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish fisheries among fishing sectors, and facilitate the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. The Program would establish a limited access privilege program (LAPP) for the non-AFA trawl catcher/processor sector. This proposed action is necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable law.

DATES: Comments must be received no later than June 29, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.
- *Fax:* 907–586–7557.
- *E-mail: 0648–AU68PR80@noaa.gov.* Include in the subject line of the e-mail the following document identifier: ''Amendment 80 RIN 0648–AU68.'' E-mail comments, with or without attachments, are limited to 5 megabytes.
- *Webform at the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

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 NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of Amendment 80 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov.*

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) has submitted Amendment 80 for review by the Secretary of Commerce (Secretary), and a notice of availability of the FMP amendment was published in the **Federal Register** on April 30, 2007 (72 FR 21198) with comments on the FMP amendment invited through June 29, 2007.

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I. Development of the Program

A. History of Bycatch and Discard Reduction Efforts in the BSAI

The Council has long recognized the need to reduce bycatch, minimize waste, and improve utilization of fish resources to the extent practicable in order to provide the maximum benefit to present and future generations of fishermen, associated fishing industry sectors, communities, and the Nation as a whole. The Council has recommended, and NMFS has approved numerous measures to reduce discards and bycatch of groundfish species over the past several years.

The Council recommended and NMFS implemented management measures to establish retention and utilization standards for pollock and Pacific cod under Amendment 49 to the FMP (62 FR 63880; January 3, 1998). More recently, in June 2003, the Council recommended Amendment 79 to the FMP to improve retention of groundfish species by implementing a GRS. The GRS applies to catcher/processor vessels using trawl gear that are greater than or equal to 125 ft. (38.1 m) and not specifically defined as catcher/processors listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA. These catcher/processors are commonly referred to as non-AFA trawl catcher/processors.

The Council's analysis of groundfish retention rates in the BSAI groundfish fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. This analysis also noted that non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) in length overall (LOA) contributed the majority of the harvest and discarded catch by the non-AFA trawl catcher/processor fleet. Given the smaller, but still considerable, proportion of overall bycatch and discard of groundfish by non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA to the overall bycatch and discard of groundfish by all non-AFA trawl catcher/processors, and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, non-AFA trawl catcher/processor vessels that are less than 125 ft (38.1 m) LOA were excluded from the GRS. The GRS requires each non-AFA trawl catcher/processor greater than or equal to125 ft (38.1 m) LOA to retain specific groundfish species at a specified minimum rate. The minimum retention rate is lower for the first year the GRS is effective in 2008 and is gradually increased to a maximum retention rate for 2011 and in all years thereafter. This graduated approach to increasing the minimum GRS rate was designed to facilitate industry compliance with the GRS by providing vessel operators several years to modify and adapt fishing operations.

Amendment 79 was approved by the Secretary on August 31, 2005, and NMFS published regulations to implement the GRS on April 6, 2006 (71 FR 17362). Those regulations will be effective on January 20, 2008. Amendment 79 authorizes groundfish retention standards as a tool for further increasing the retention and utilization of groundfish and responding to bycatch reduction goals described in National Standard 9 of the MSA. The GRS balanced the requirements for conservation and management of the groundfish fisheries under the MSA with the requirements to minimize bycatch under National Standard 9 and minimize economic burdens under National Standard 7 (minimize costs and avoid unnecessary duplication) of the MSA.

The Council took final action to recommend Amendment 80 on June 9, 2006. Amendment 80 and the implementing Program would continue initiatives by the Council and NMFS to reduce bycatch and discard of fish species in the BSAI non-pollock trawl groundfish fisheries. The Program would (1) Extend the application of the GRS to non-AFA trawl catcher/processor vessels of all sizes by including catcher/processor vessels under 125 ft (38.1 m) LOA; and (2) reduce the amount of halibut and crab bycatch known as prohibited species catch (PSC) that may be taken while non-AFA trawl catcher/processors are groundfish fishing in the BSAI. These measures would consider efficiency in utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the objectives of National Standards 5, 7, and 9 of the MSA.

The Program would facilitate this improved retention and utilization of groundfish resources through specific economic incentives provided by a LAPP. It is anticipated that LAPPs would encourage improved retention and utilization of fishery resources by allocating specific amounts of certain non-pollock groundfish species, halibut PSC, and crab PSC to non-AFA trawl catcher processors; and permit the formation of cooperatives that would receive exclusive harvest privileges for a portion of these fishery resources. The ways in which the use of exclusive harvest privileges would improve the retention and utilization of fishery resources by non-AFA trawl catcher/processors are described in Parts B and C of Section I below.

B. The Non-Pollock Trawl Groundfish Fisheries

One of the primary reasons for the relatively high discard rates of groundfish by non-AFA trawl catcher/processors is the nature of the fisheries in which those vessels participate. The non-AFA trawl catcher/processor sector primarily participates in non-pollock groundfish fisheries. The non-pollock groundfish fisheries are primarily comprised of groups of species that share similar habitat (e.g., flatfish fisheries such as rock sole, flathead sole, and yellowfin sole). Because these species occur together, they are typically harvested together. When a non-AFA trawl catcher/processor retrieves its net, very often multiple species of fish are present. If a vessel operator is targeting only one species of fish, and other species are retrieved along with the desired catch, the vessel operator may have an incentive to discard the less valuable species and retain only the higher value species. The multi-species nature of these fisheries makes it difficult for vessel operators to target only one species, and an economic incentive is created to discard fish.

NMFS establishes a total allowable catch (TAC) for each of the non-pollock groundfish fisheries based on the species's annual biomass with the goal of providing a conservatively managed sustainable yield. Harvesters compete for the TAC, resulting in a ''race for

fish,'' wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available TAC. This race for fish only increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerates the harvest rate for the more valuable species.

Because vessel operators are competing with each other for shares of a common TAC, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower bycatch rates, or using gear modifications that may reduce bycatch but have lower harvest rates, if those actions would limit the ability of that vessel to effectively compete with other vessels. Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species before the TAC limit is reached because all vessel operators are competing for a limited TAC.

Additionally, non-pollock groundfish fisheries are constrained by catch limits for non-target species, such as halibut, red king crab, *Chinocetes bairdi* crab, and *C. opilio* crab. Halibut and crab are harvested in other fisheries and cannot be retained by vessels using trawl gear. NMFS establishes PSC limits for halibut in the entire BSAI, and red king crab, *C. opilio* crab, and *C. bairdi* crab in specific areas of the BSAI to limit the adverse impact of harvesting operations on the long-term productivity of those species. NMFS monitors these PSC limits, and may close or otherwise restrict trawl harvests if PSC limits are projected to be reached. Fishery closures due to reaching PSC limits can limit harvest of the groundfish TAC and reduce overall revenue to vessel operators and crew. As vessel operators seek to maximize harvest of TAC, they may accelerate fishing operations to maximize harvest before a crab or halibut PSC limit is reached. A ''race for PSC'' further exacerbates competition and the incentives to harvest rapidly, resulting in greater potential waste and higher discard rates of less valuable groundfish species.

The multi-species nature of non-pollock groundfish fisheries further limits the ability of a fisherman to specifically target valuable groundfish species as they race with their competitors. Vessel operators may discard considerable portions of their catch to maximize harvests of more valuable species even though the discarded species may have considerable market value.

C. LAPPs

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) The halibut and sablefish individual fishing quota (IFQ) Program (November 9, 1993, 58 FR 59375); (2) the AFA (December 30, 2002; 67 FR 69692); (3) the BSAI Crab Rationalization Program (March 2, 2005; 70 FR 10174); and (4) the Central GOA Rockfish Program (November 20, 2006; 71 FR 67210). An extensive discussion of LAPPs can be found in the EA/RIR/IRFA prepared for this action and in the National Research Council's publication *Sharing the Fish* which was consulted and considered during the development of the Program.

A LAPP allows vessel operators to make operational choices to reduce discard of fish because the strong incentive to maximize catch in the minimum amount of time has been reduced. If a vessel operator receives an exclusive portion of the TAC for non-pollock groundfish species and the associated halibut and crab PSC, he knows that he need not compete with other harvesters. That vessel operator can then choose to fish in a slower, less wasteful fashion, use modified gear with a lower harvest rate but which reduces bycatch, coordinate with other vessel operators to avoid areas of high bycatch, process fish in ways that yield increased value but which are possible only by slowing the processing rate, or otherwise operate in ways that limit bycatch. The examples cited in this paragraph have been used by vessel operators in other LAPPs in the North Pacific, and NMFS anticipates non-AFA trawl catcher/processors would use similar techniques to reduce bycatch.

LAPPs can improve the profitability of fishing operators holding the exclusive harvest privilege. In most cases, LAPPs provide harvesters greater flexibility in tailoring their fishing operations to specific fisheries which can reduce operational costs. Additionally, vessel operators may reduce costs by avoiding costly improvements in vessel size or fishing power designed to outcompete other harvesters. Slower fishing rates can improve product handling and quality and increase the exvessel price of product. Vessel operators can also choose to consolidate less profitable fishing operations onto one vessel. Other potential advantages to the holders of exclusive harvest privileges have been analyzed during the development of past LAPPs.

LAPPs can increase the costs of entering the fishery substantially because the permits acquire value and must be purchased prior to entry. Consolidation can limit employment opportunities as well. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically require greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and proper debiting of accounts. Participants in LAPPs may also use their excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These effects and others have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the fishery. Entry costs for any LAPP are likely to be higher than in other non-LAPP fisheries, and those costs limit the ability of those operators without the financial wherewithal to participate in these fisheries. A loan program for entry level participants has been established in the Halibut and Sablefish IFQ Program to assist entry into that LAPP, but fishery participants in other LAPPs must rely on other sources of financing.

Based on extensive experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council recommended the Program to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to those holding the harvest privileges. The Program would provide an incentive for non-AFA trawl catcher/processors to harvest certain species of non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited number of harvesters. The Program would encourage participants to harvest more efficiently and less wastefully by allowing them to choose to (1) Form harvesting cooperatives with other harvesters that would receive an exclusive annual harvest privilege of specific groundfish species; or (2) fish in a limited access fishery comprised of

fishery participants that choose not to join a cooperative. The principal benefits from the Program would be realized by harvesters that choose to join a cooperative.

D. LAPPs, GRS, and Reduced PSC

The Council also recognized that some of the compliance costs associated with the GRS, particularly for non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could be reduced under LAPP management. The Council recognized that if harvesters could apply the GRS to a cooperative in the aggregate, by aggregating retention rates by all vessels in a cooperative, owners of non-AFA trawl catcher/processors less than 125 ft (38.1 m) could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow other larger vessels to harvest the cooperative's exclusive allocation of fish without incurring the compliance costs associated with monitoring the GRS. Non-AFA trawl catcher/vessels less than 125 ft (38.1 m) LOA would still receive economic benefits from their harvests but would not need to refit their vessels to meet the additional M&E requirements and pay the additional costs to fish in the BSAI. Those vessels could continue to participate in other fisheries in the GOA. Furthermore, the catch associated with smaller catcher/processor vessels would be subject to the GRS, thereby further improving retention of groundfish and reducing discards of fish.

Additionally, for those non-AFA trawl catcher/processor vessels that do fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish required under the GRS may be offset by increased profitability from those vessels because they are no longer operating in a race for fish. The Council considered these factors in recommending that the GRS be extended to all non-AFA trawl catcher/processors under the Program.

The Council also recognized that LAPP management under a cooperative allocation can encourage lower bycatch as described in Part D of Section I above. Because vessel operators in cooperatives are better able to target catch and can engage in voluntary agreements to avoid areas with higher PSC, the Council recommended an overall reduction in the amount of halibut and crab PSC that may be used by the non-AFA trawl catcher/processor sector. The Program would incorporate this recommendation, furthering the Council's goals to reduce bycatch and discard of fishery species.

E. Overview of the Program

The rationale behind specific aspects of the Program are provided in greater detail later in this preamble. The Council adopted the Program to meet the broad goals of (1) Improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the GRS to non-AFA trawl catcher/processor vessels of all lengths in that sector; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) authorizing the allocation of groundfish species to harvesting cooperatives and establishing a LAPP for the non-AFA trawl catcher/processors to encourage fishing practices with lower discard rates, and improve the opportunity for increasing the value of harvested species while lowering potential costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries proposed by the Program would affect a wide range of fishing practices and regulations. The Program would affect management of the non-AFA trawl catcher/processors, other BSAI trawl fishery participants, and other harvesters in the North Pacific. As such, the Program proposes a complex suite of measures to ensure the goals of the Program are met and minimize potential adverse impacts on affected fishery participants.

The following section provides an overview of the suite of measures the Program proposes to implement. Each Program element will be addressed in detail in subsequent sections of this preamble.

1. Community Development Quota (CDQ) Program Changes

The Program would incorporate statutory mandates in the MSA as amended by Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241; July 11, 2006), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479, January 12, 2007). The proposed rule would modify the percentage of TAC for directed fisheries that are allocated to the CDQ Program, and the percentage of halibut, crab, and non-Chinook salmon PSC allocated to the CDQ Program as prohibited species quota (PSQ). The proposed rule includes other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law as described in Section II of this preamble.

2. Amendment 80 Sector and Amendment 80 Vessels

Eligible Program participants would be defined by applicable legislation and the Program. Applicable legislation is described in greater detail in Section II of this preamble. The Program would incorporate statutory mandates in section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447; December 8, 2004) which defines who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species. The Program would define the ''Amendment 80 sector'' as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The defined list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are ''Amendment 80 vessels.''

3. Amendment 80 Species

The Program would allocate a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six species would be the ''Amendment 80 species,'' and include Aleutian Islands (AI) Pacific ocean perch (POP), BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These Amendment 80 species would be allocated between the Amendment 80 sector and all other BSAI trawl fishery participants not in the Amendment 80 sector. These other trawl fishery participants include AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels. Collectively, this group of trawl fishery participants comprises the ''BSAI trawl limited access sector.''

These six species are economically valuable and have historically been targeted by non-AFA trawl catcher/processors, but fisheries associated with these species have high rates of discard or waste relative to other groundfish fisheries. Other species, such as Alaska plaice, are occasionally harvested in the BSAI trawl fisheries, but these other species are a minor component of the overall biomass and value of non-pollock groundfish harvested, less subject to an intense race for fish, and would not be allocated under the Program.

4. Allocations of TAC and PSC in the BSAI Trawl Fisheries

Each year, the Program would allocate an amount of Amendment 80 species

available for harvest, called the initial total allowable catch (ITAC), and crab and halibut PSC to two defined groups of trawl fishery participants: (1) The Amendment 80 sector; and (2) the BSAI trawl limited access sector. Allocations made to one sector would not be subject to harvest by participants in the other fishery sector except under a specific condition. Fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested could be reallocated to Amendment 80 cooperatives.

The ITAC represents an amount of the TAC for each Amendment 80 species that is available for harvest, after accounting for allocations to the CDQ Program and the incidental catch allowance (ICA). The ICA is set aside for the incidental harvest of an Amendment 80 species while targeting other groundfish species in non-trawl fisheries (e.g., yellowfin sole incidental harvests in the hook-and-line Pacific cod fishery) and in the BSAI trawl limited access sector fisheries (e.g., rock sole incidentally harvested by AFA trawl catcher vessels in the Pacific cod fishery).

The Program would allocate crab and halibut PSC to the Amendment 80 and BSAI trawl limited access sectors to accommodate PSC use by these sectors based on past PSC use with specific consideration given to possible future requirements. The Program would further address the Council's goals of reducing bycatch and discard of groundfish species by reducing the total amount of crab and halibut PSC assigned to the Amendment 80 sector.

5. BSAI Trawl Limited Access Sector

The Program would provide a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. The Program would modify the calculation of AFA sideboard limits for Amendment 80 species and crab and halibut PSC limits necessary to allow the efficient operation of AFA vessels. The Program would adjust the maximum limit for red king crab bycatch in the Red King Crab Savings Subarea (RKCSS).

6. Amendment 80 Quota Share

The Program would assign Amendment 80 quota share (QS) for Amendment 80 species to the owners of Amendment 80 vessels. The Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. The Program would establish criteria for harvesters in the Amendment 80 sector to apply for and receive QS, criteria for initially allocating QS, and criteria for the transfer of QS.

The Program would assign Amendment 80 QS based on historic catch patterns of an Amendment 80 vessel during 1998 through 2004. The Program would assign QS based on the relative proportion of an Amendment 80 species harvested by an Amendment 80 vessel compared to all other Amendment 80 vessels.

The Program would assign Amendment 80 QS only to persons who submit a timely and complete application for Amendment 80 QS. In most cases, the Program would assign the Amendment 80 QS to the Amendment 80 vessel owner. In specific cases where an Amendment 80 vessel has been lost or is otherwise permanently ineligible to fish in U.S. waters, the Program would assign the Amendment 80 QS to the holder of the license limitation program (LLP) license originally assigned to that Amendment 80 vessel. Once Amendment 80 QS is assigned based on the historic catch patterns of an Amendment 80 vessel, it could not be divided or transferred separately from that Amendment 80 vessel. If the Amendment 80 QS is assigned to the LLP license originally issued for that Amendment 80 vessel, it could not be transferred separately from that LLP license.

7. Amendment 80 Cooperatives

Persons that receive Amendment 80 QS would be able to join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders would be able to form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative would receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that would be for the exclusive use by that cooperative for harvest in a given year. The Program would establish requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ to a cooperative, and transfers of CQ among cooperatives. A cooperative would receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders.

Each Amendment 80 cooperative would receive an annual CQ with an exclusive limit on the amount of crab and halibut PSC the cooperative can use while harvesting in the BSAI. This halibut and crab PSC CQ would be assigned to a cooperative proportional to the amount of Amendment 80 QS held by the members, and would not be based on the amount of crab or halibut PSC historically used by the cooperative members. This provision would not reward harvesters with high PSC rates with large amounts of PSC. Instead, PSC would be issued in proportion to the amount of Amendment 80 species that are assigned for harvest to a cooperative.

The Program would provide opportunities for Amendment 80 sector participants to trade harvest privileges among cooperatives to further encourage economically efficient fishing operations. An Amendment 80 cooperative would not be able to transfer CQ to the Amendment 80 limited access fishery, or to the BSAI trawl limited access sector.

A cooperative structure may allow Amendment 80 vessel operators to manage PSC rates more efficiently. By reducing PSC through more efficient cooperative operations, such as through gear modifications, Amendment 80 vessel operators may also increase the harvest of valuable targeted groundfish species and improve revenues that would otherwise be foregone if a fishery were closed due to reaching PSC limits.

The Program would allow Amendment 80 cooperatives to receive a rollover of an additional amount of CQ, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector is projected to go unharvested. This rollover to the Amendment 80 cooperatives would be at the discretion of NMFS based on projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative would receive an additional amount of CQ that is based on the proportion of the Amendment 80 QS held by that Amendment 80 cooperative as compared with all other Amendment 80 cooperatives.

Fishery participants in a cooperative could consolidate fishing operations on a specific Amendment 80 vessel or subset of Amendment 80 vessels, thereby reducing M&E and other operational costs, and harvest fish in a manner more likely to be economically efficient and less wasteful.

8. Amendment 80 Limited Access Fishery

Amendment 80 QS holders that choose not to join an Amendment 80 cooperative would be able to participate in the Amendment 80 limited access fishery. The Program would assign the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80

species ITAC and halibut and crab PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery would continue to compete with each other; would not realize the same potential benefits from consolidation and coordination; and would not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.

9. Use Caps

The Council considered the effect of consolidation with the allocation of an excessive share of harvest privileges to Amendment 80 cooperatives. In response, the Program would implement use caps to limit the amount of Amendment 80 QS a person could hold, the amount of CQ they could use, and the amount of ITAC an Amendment 80 vessel could harvest. These use caps would moderate some of the potentially adverse effects of excessive consolidation of fishing operations on fishery participants, such as lost employment opportunities for fishing crew while recognizing the desire to provide economic efficiencies to Amendment 80 QS holders.

10. Gulf of Alaska (GOA) Sideboard Limits

Catch limits, commonly known as sideboards, would limit the ability of participants eligible for this Program to expand their harvest efforts in the GOA. The Program is designed to provide certain economic advantages to participants. Program participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. GOA groundfish and halibut PSC sideboards would limit the catch by Amendment 80 vessels to historic levels in the GOA. The Program would limit the total amount of catch in other groundfish fisheries that could be taken by Amendment 80 vessels, including harvests made in the State of Alaska (State) waters which are open during Federal fishing seasons to allow the harvest of fish assigned to the Federal TAC—the ''parallel'' groundfish fisheries.

Sideboards would limit harvest of Pacific cod, pollock, and rockfish fisheries in the GOA, the eligibility of Amendment 80 vessels to participate in GOA flatfish fisheries, and the amount of halibut PSC that Amendment 80 vessels could catch when harvesting groundfish in the GOA. Sideboards would apply to all Amendment 80 vessels and all LLP licenses that can be used on an Amendment 80 vessel.

11. Monitoring and Enforcement (M&E)

M&E provisions are necessary for accurate catch accounting and compliance with the Program to ensure that Amendment 80 QS holders maintain catches within annual CQ and ITAC allocations in the BSAI and do not exceed sideboard limits in the GOA. The M&E measures proposed for the Program are similar to those currently required for compliance with Amendment 79, and mirror those in place for catcher/processor vessels participating in the Central GOA Rockfish Program (see regulations in § 679.84 for additional detail).

12. GRS Requirements

Under the Program, all non-AFA trawl catcher/processor vessels, which includes all Amendment 80 vessels, regardless of size, would be required to meet GRS requirements in the BSAI. For Amendment 80 vessels harvesting in the BSAI under the authority of an Amendment 80 cooperative, GRS requirements would apply collectively to all vessels harvesting under the authority of the cooperative rather than on a vessel-specific basis. An Amendment 80 cooperative would be required to meet the GRS on an aggregate basis for all vessels in the Amendment 80 cooperative. The Program would modify some of the GRS provisions scheduled for implementation on January 20, 2008 (April 6, 2006; 71 FR 17362). Specifically, the Program would modify the GRS by extending the GRS to all non-AFA trawl catcher/processor vessel sizes and calculate the GRS for Amendment 80 vessels assigned to an Amendment 80 cooperative on an aggregate basis.

13. Economic Data Report (EDR)

The Program would implement an economic data collection program to assess the impacts of Amendment 80 on various components of the fishery, including skippers and crew. The Program would establish a process for collecting and reviewing economic data generated under Amendment 80 by requiring the annual submission of an EDR from each Amendment 80 QS holder.

II. Legislation Affecting the Program

Eligibility to participate in the Program and ITAC allocation under the Program are affected by several pieces of recent legislation:

- Section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447; December 8, 2004), referred to in this proposed rule as the Capacity Reduction Program (CRP), which defined the Amendment 80 sector and implemented a capacity reduction program for several catcher/processor sectors;
- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241; July 11, 2006), referred to in this proposed rule as the Coast Guard Act, which amended provisions of the CDQ Program in the MSA; and
- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479, January 12, 2007), referred to in this proposed rule as the MSRA, which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

The following sections detail the effects of the CRP, Coast Guard Act, and MSRA on the development of the Program and this proposed rule. These pieces of legislation directly dictate specific elements of the Program.

A. The Capacity Reduction Program (CRP)

Among other things, the CRP legislates who may participate in the non-AFA trawl catcher/processor sector in the BSAI for ''non-pollock groundfish fisheries;'' and defines the non-pollock groundfish fisheries in the BSAI as ''target species of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.'' Because all of the Amendment 80 species are included in the CRP's definition of non-pollock groundfish fishery, the CRP's eligibility requirements for the non-AFA trawl catcher/processor sector apply to the Program's eligibility criteria for the Amendment 80 sector. Therefore, the Program would incorporate the CRP's definition of a non-AFA trawl catcher/processor.

1. Eligibility To Participate in the Non-AFA Trawl Catcher/Processor Sector (Amendment 80 Sector)

The CRP defines the non-AFA trawl catcher/processor sector as the owner of each trawl catcher/processor that

- Is not an AFA trawl catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the AFA;
- Was issued a valid LLP license endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity; and
- The Secretary determines has harvested with trawl gear and processed not less than a total of 150 mt of non-

pollock groundfish during the period January 1, 1997, through December 31, 2002.

Based on a review of harvest data from 1997 through 2002, NMFS has identified 28 vessels that appear to meet the requirements of the CRP listed above. Those 28 vessels are identified in the following Table 1.

TABLE 1.—LIST OF AMENDMENT 80 VESSELS

Name of Amendment 80 vessel	USCG documentation number
ALASKA JURIS	569276
ALASKA RANGER	550138
ALASKA SPIRIT	554913
ALASKA VICTORY	569752
ALASKA VOYAGER	536484
ALASKA WARRIOR	590350
ALLIANCE	622750
AMERICAN NO I	610654
ARCTIC ROSE	931446
ARICA	550139
BERING ENTERPRISE	610869
CAPE HORN	653806
CONSTELLATION	640364
DEFENDER	665983
ENTERPRISE	657383
GOLDEN FLEECE	609951
HARVESTER ENTERPRISE	584902
LEGACY	664882
OCEAN ALASKA	623210
OCEAN PEACE	677399
PROSPERITY	615485
REBECCA IRENE	697637
SEAFISHER	575587
SEAFREEZE ALASKA	517242
TREMONT	529154
U.S. INTREPID	604439
UNIMAK	637693
VAERDAL	611225

The Program would define ''Amendment 80 vessel'' as the vessels listed in this table, or because there may be additional eligible vessels that NMFS is unaware of at this time, any vessel that meets the CRP's eligibility criteria for the non-AFA trawl catcher/processor sector. NMFS welcomes comment from members on the accuracy of this list of Amendment 80 vessels.

2. Cooperatives and ITAC Assigned to the Amendment 80 Sector

The CRP does not limit the ability for the Council to recommend, nor the Secretary to approve and implement, management measures that define the amount of ITAC assigned to the Amendment 80 sector, or other management measures for the Amendment 80 sector not in conflict with the CRP or other law. Any such management measures would include: Establishing Amendment 80 cooperatives; allocating only some of the ''non-pollock groundfish species'' to the Amendment 80 sector; or otherwise proposing measures to manage the Amendment 80 sector, or other non-Amendment 80 sector participating in the BSAI trawl fisheries.

B. The Coast Guard Act

The Coast Guard Act amended section 305(i)(1) of the MSA by removing all of the CDQ Program-related requirements in effect at the time the legislation was enacted and replacing them with new requirements. The amendments to section 305(i)(1) addressed all aspects of management and oversight of the CDQ Program including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the CDQ Program; allocations of quota among the CDQ groups; management of the CDQ fisheries; eligibility criteria for participation in the CDQ Program; limits on allowable investments; the creation of a CDQ administrative panel; compliance with State reporting requirements; a decennial review and allocation adjustment process; and other aspects of program administration and oversight by the State and NMFS, on behalf of the Secretary.

The elements of the Coast Guard Act relevant to the Program are the species or species groups allocated to the CDQ Program under section 305(i)(1)(B)(i) and the regulation of harvest of these allocations under section 305(i)(1)(B)(iv). Section 305(i)(1)(B)(ii) affects the percentage allocations of all of the groundfish species allocated to the CDQ Program, except pollock and sablefish. Because this section was further amended under the MSRA, it is discussed in more detail in Part C of this section below.

1. Groundfish Species or Species Groups Allocated to the CDQ Program

The first provision from the Coast Guard Act that affects the CDQ Program and the Program is section 305(i)(1)(B)(i), which requires that ''the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006.'' Prior to this amendment, the MSA stated that ''a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.'' Since 1998, NMFS has allocated to the CDQ Program a percentage of each groundfish TAC category, except squid. The amended language in the MSA requires that only those species or species groups with a directed fishery in the BSAI be allocated to the CDQ Program. This is a more limited list of species or species groups than has been allocated to the CDQ Program in the past.

Congress did not define the phrase ''directed fishery'' in the Coast Guard Act. However, based on the statutory language and the legislative history, NMFS determined that the phrase directed fishery for purposes of section 305(i)(1) of the MSA means a fishery for which sufficient TAC exists to open a directed fishery, and the species or species group is economically valuable enough for vessel operators to conduct directed fishing for that species or species group. NMFS applied this interpretation in the 2007 and 2008 final harvest specifications for the groundfish of the BSAI (March 2, 2007; 72 FR 9451).

The groundfish species and species groups that meet this definition and those that do not are shown in Table 2.

TABLE 2.—GROUNDFISH SPECIES AND SPECIES GROUPS ALLOCATED AND NOT ALLOCATED TO THE CDQ PROGRAM

Species and species groups allocated to the CDQ Program	
Management area or subarea	Species or species group
Bering Sea (BS) and AI	Pollock.
BSAI	Pacific cod.
BS and AI	Sablefish (from both the hook-and-line and pot gear allocation and the trawl allocation of the sablefish TAC).
Eastern Aleutian Islands/Bering Sea (EAI/BS), Central Aleutian Islands (CAI), Western Aleutian Islands (WAI).	Atka mackerel.
EAI, CAI, WAI	Pacific ocean perch.
BSAI	Flathead sole.
BSAI	Rock sole.

TABLE 2.—GROUNDFISH SPECIES AND SPECIES GROUPS ALLOCATED AND NOT ALLOCATED TO THE CDQ PROGRAM—Continued

Species and species groups allocated to the CDQ Program	
Management area or subarea	Species or species group
BSAI	Yellowfin sole.
BSAI	Arrowtooth flounder.
BS	Greenland turbot.
Species and species groups not allocated to the CDQ Program	
Management area or subarea	Species or species group
Bogoslof	Pollock.
BSAI	Alaska plaice.
BSAI	Other flatfish.
AI	Greenland turbot.
BS	Pacific ocean perch.
BSAI	Northern rockfish.
BSAI	Shortraker rockfish.
BSAI	Rougheye rockfish.
BS and AI	Other rockfish.
BSAI	Other species.
BSAI	Squid.

As described in the 2007 and 2008 final harvest specifications, and proposed under the Program, catch of species and species groups that are not allocated to the CDQ Program would be managed under the regulations and fishery status that applies to that species or species group in the non-CDQ groundfish fisheries. Retention of non-allocated species that are closed to directed fishing would either be limited to maximum retainable amounts or all catch of the species will be required to be discarded. Notices of closures to directed fishing and retention requirements for these species would apply equally to both the CDQ and non-CDQ sectors.

The Program would revise regulations at § 679.20 that govern the annual specifications process for the CDQ Program. The list of species or species groups allocated to the CDQ Program in § 679.20 must be consistent with the definition of directed fishery for purposes of section 305(i)(1) of the MSA. This proposed rule would establish the list of species and species groups allocated to the CDQ Program in regulation. The allocated species or species groups could be revised in the future through rulemaking if circumstances change so that (1) a species or species group that currently is not allocated to the CDQ Program becomes a ''directed fishery'' in the future, or (2) a species or species group currently allocated to the CDQ Program is no longer a ''directed fishery'' in the future.

In addition to the species and species groups allocated to the CDQ Program, the percentage allocation of the TAC for each species or species group in § 679.20 also must be consistent with the MSA. The percentage allocations of pollock and sablefish to the CDQ Program are governed by section 305(i)(1)(B)(i) which was implemented through the Coast Guard Act. Because section 305(i)(1)(B)(i) maintains current percentage allocations of pollock and sablefish to the CDQ Program, the percentage allocations for these species will continue to be those percentage allocations in effect on March 1, 2006. Ten percent of the Bering Sea subarea and Aleutian Islands subarea pollock TACs will continue to be allocated to the CDQ Program as directed fishing allowances. Twenty percent of the hook-and-line and pot gear (fixed gear) allocation of sablefish and 7.5 percent of the trawl allocation of sablefish will continue to be allocated to the CDQ Program. The percentage allocations of all of the other groundfish species allocated to the CDQ Program are addressed under section 305(i)(1)(B)(ii) of the MSA, which was last amended through the MSRA. These allocations are discussed in more detail in *The MSRA* below.

2. Regulation of CDQ Program Harvests

The Coast Guard Act created a new section 305(i)(1)(B)(iv) of the MSA that requires that ''the harvest of allocations under the [CDQ] program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.'' If Amendment 80 is approved, the authorization for allocations of Amendment 80 species to fishing cooperatives triggers the requirements of section 305(i)(1)(B)(iv).

Therefore, the regulation of harvest in a CDQ fishery may be no more restrictive than the regulation of the harvest in the fisheries in which the Amendment 80 cooperatives participate. Consistent with the requirements of section 305(i)(1)(B)(iv), NMFS proposes to apply to any non-AFA trawl catcher/processors harvesting groundfish in the CDQ Program the same M&E and GRS requirements that would apply to Amendment 80 vessels harvesting groundfish in the BSAI. The proposed regulations for harvest by non-AFA trawl catcher/processor vessels in the CDQ Program are detailed in Sections III and XII of this preamble.

C. The MSRA

The MSRA substantially amends the MSA. Pertinent to the Program, the MSRA includes amendments relating to LAPPs, the CDQ Program, and cost recovery and fee collection provisions.

The MSRA includes provisions that affect the Program primarily by (1) adding definitions of a limited access privilege, limited access system, and a new section, 303A—Limited Access Privilege Programs, to the MSRA; (2) specifying the percentage of each TAC, except pollock and sablefish, that will be allocated to the CDQ Program starting January 1, 2008; (3) extending the management costs for which NMFS may collect fees to recover costs related to LAPPs; and (4) expanding the authority and requirements to collect economic data from fishery participants.

1. LAPP Provisions

The MSRA amended the MSA under section 3(26) to define a ''limited access privilege'' as ''a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and includes an individual fishing quota; but does not include community development quotas as described in section 305(i).''

The MSRA amended the MSA under section 3(27) to define a ''limited access system'' as ''a system that limits participation in a fishery to those satisfying certain eligibility criteria of requirements contained in a fishery management plan or associated regulation.''

The Program is specifically included as a LAPP under section 303A under the provisions of section 303A(i) which reads as follows:

(i) TRANSITION RULES.—(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual fishing quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the enactment of the [MSRA] except that—

(A) The requirements of section 303(d) of this Act [the MSA] in effect on the day before the date of enactment of that Act [the MSRA] shall apply to any such program;

(B) The program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) Nothing in this subsection precludes a Council from incorporating criteria in this section into any such plans.

The Council took final action to recommend Amendment 80 to the FMP on June 9, 2006. Therefore, section 303(i)(1) would not require the Program to comply with the provisions of section 303A of the MSA, other than a review of the Program five years after implementation under section 303A(i)(1)(B). The review process required under section 303A(i)(1)(B) does not require immediate action by the Council or implementing regulations by the Secretary to ensure compliance with the MSA and those provisions are not incorporated in this proposed rule.

Section 303A(i)(1)(C) would permit the Council to recommend incorporating other provisions of section 303A into the Program. Any such recommendations would be developed through a separate FMP amendment and subject to a separate rule making process in the future.

2. CDQ Provisions

The MSRA amended section 305(i)(1)(B)(ii)(I) of the MSA to require that the allocation of TAC to the CDQ Program ''for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation of 10.7 percent effective January 1, 2008.'' The term ''directed fishery'' for purposes of this requirement is interpreted as described under Part B of this section above. Therefore, this requirement means that 10.7 percent of the TAC for Pacific cod, Atka mackerel, yellowfin sole, rock sole, Bering Sea Greenland turbot, arrowtooth flounder, flathead sole, and AI Pacific ocean perch will be allocated to the CDQ Program annually.

Allocations of these species to the CDQ Program are known as ''CDQ reserves.'' As required by section 305(i)(1)(C) of the MSA, each of these allocations to the CDQ Program are further allocated among the CDQ groups based on the percentage allocations that were in effect on March 1, 2006. A table listing the percentage allocations among the CDQ groups was published in the **Federal Register** on August 31, 2006 (71 FR 51804). All catch of each groundfish species allocated to the CDQ Program will continue to accrue against the CDQ group's allocation regardless of whether that fish was caught while directed fishing for that species or is incidentally caught while fishing for another species.

Current regulations at § 679.7(d)(5) prohibit each CDQ group from exceeding its allocation of any groundfish CDQ species, crab, halibut, or salmon PSQ. Exceeding an allocation of any groundfish CDQ or PSQ is a violation of 50 CFR part 679 and can result in enforcement action. These regulations create what is known as ''hard cap'' management for the groundfish CDQ species allocated under section 305(i)(1)(B)(ii)(I) and (II) of the MSA. Each CDQ group must manage all of their CDQ fisheries to maintain catch within all of these CDQ groundfish and PSQ allocations. Reaching an allocation of one groundfish species limits further CDQ fishing because such fishing likely will result in additional catch of the groundfish species for which the allocation has already been reached.

Section 305(i)(B)(ii) of the MSA was amended by the MSRA to require that the CDQ allocations of the species allocated under section 305(i)(1)(B)(ii)(I) and (II) may not be exceeded. This requirement maintains the existing ''hard cap'' management for these CDQ allocations. NMFS would continue to allocate these CDQ reserves among the CDQ groups based on the percentage allocations required by the MSA. All catch by vessels fishing on behalf of a CDQ group would accrue against that CDQ group's allocation. Each CDQ group would continue to be prohibited from exceeding the amount of each CDQ reserve allocated to it annually. Therefore, no changes to regulations are needed to implement this provision of the MSRA.

Section 305(i)(1)(C) was amended by the MSRA to require that 0.7 percent of the 10.7 percent allocated to the CDQ Program for all of the groundfish species, except pollock and sablefish, shall be allocated among the CDQ groups by the CDQ administrative panel (CDQ Panel). The CDQ Panel was created under the Coast Guard Act in section 305(i)(1)(G) of the MSA. Each CDQ group has a representative on the CDQ Panel and the panel may only make decisions by unanimous vote of all six members. NMFS anticipates that the CDQ Panel will submit its decision about how to allocate the 0.7 percent of each groundfish CDQ reserve, except pollock and sablefish, to NMFS prior to January 1, 2008, so that NMFS can establish quota account balances for each of the CDQ groups. However, if the CDQ Panel does not submit its percentage allocations to NMFS, the MSA requires the Secretary to allocate this portion of the CDQ reserves based on the nontarget needs of the CDQ groups. Regulations to implement this provision of the MSA are not included in this proposed rule because they are outside of the scope of MSA requirements directly necessary to implement Amendment 80.

3. Cost Recovery

The MSRA amended several provisions in the MSA concerning the collection of fees for LAPPs. Section 304(d)(2)(A) of the MSA as amended by the MSRA reads as follows:

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

(i) limited access privilege program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

This provision applies to LAPPs that meet the definitions of a ''limited access privilege'' and a ''limited access system.'' Should NMFS determine that the Program meets these definitions and the MSA does not otherwise prohibit collection of fees in this Program, the Secretary would be authorized to collect fees to recover costs not to exceed three

percent of the exvessel value of fish harvested under Program under section 304(d)(2)(B). NMFS is reviewing these provisions of the MSA. Pending this review, NMFS may develop future rule making to implement fee collection.

4. Economic Data Collection

The MSRA amended several provisions under section 303 of the MSA by expanding the authority and the requirements for the Secretary to collect economic data when developing and implementing FMPs and accompanying regulations. The MSA requires that any FMP, including Amendment 80, which is prepared by any Council or the Secretary, with respect to any fishery, shall—

- Specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including but not limited to economic information necessary to meet the requirements of the MSA (Section 303(a)(5));
- Include a fishery impact statement which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of conservation and management measures (Section 303(a)(9)); and
- Include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact (Section 303(a)(13)).

The Program would address these statutory mandates through the implementation of an economic data collection program. See Section XIII of this preamble for additional detail.

III. Nonspecified Reserve and CDQ Program

The Program would (1) Modify allocations to the nonspecified reserve and the CDQ reserves; (2) increase PSQ allocations for halibut, crab, and non-Chinook salmon; (3) apply the same M&E requirements applicable to non-AFA trawl catcher/processors while participating in the non-CDQ groundfish fisheries when these vessels participate in the CDQ fisheries; and (4) remove requirements for the CDQ delivery report and the CDQ catch report, and remove prohibitions limiting the retention of species not allocated to the CDQ Program.

A. Nonspecified Reserve

Current regulations allocate 15 percent of the TAC for each groundfish TAC category, except pollock and the hook-and-line and pot gear allocation of sablefish, to the nonspecified reserve before any further allocation of the TACs are made. The nonspecified reserve serves as a buffer to ensure that harvest levels do not exceed the TAC. A portion of the nonspecified reserve is set aside for allocation to the CDQ Program. For most groundfish species, one-half of the nonspecified reserve, or 7.5 percent of the TAC, currently is allocated to the CDQ Program. The remaining amount of the nonspecified reserve, 7.5 percent of the TAC, can be released by NMFS for use in the non-CDQ fisheries to provide additional harvest opportunities.

Because the Program would establish exclusive harvest privileges that are carefully monitored, the Program would provide greater certainty that TAC levels would not be exceeded. Therefore, the allocation of 15 percent of the TAC of the Amendment 80 species to the nonspecified reserve would not be required to ensure harvests are maintained with the TAC. Removing the nonspecified reserve for species managed under a LAPP is consistent with the management of other BSAI groundfish species managed under a LAPP. A nonspecified reserve is not established for pollock managed under the AFA, nor for fixed gear sablefish managed under the CDQ and IFQ Programs.

The Program would not modify the current allocation of 15 percent of the TAC for non-Amendment 80 species to the nonspecified reserve. The total metric tons of biomass that would be assigned to the nonspecified reserve on an annual basis would be expected to be small relative to current allocations to the nonspecified reserve because it would not include a portion of the TAC from Amendment 80 species. The TAC from the Amendment 80 species comprise the majority of the TAC currently assigned to the nonspecified reserve. Because the total amount of the nonspecified reserve would not be expected to be large, and would not include TAC from the Amendment 80 species, the Program would not reassign this nonspecified reserve for use by the Amendment 80 or BSAI trawl limited access sectors for use as Amendment 80 species. Table 3 summarizes the allocation of BSAI groundfish species to the nonspecified reserve.

B. CDQ Reserves

As noted in Section II of this preamble, the Program would allocate 10.7 percent of the TAC for all groundfish species allocated to the CDQ Program, other than pollock and sablefish. This allocation would occur before allocations to the other fishery participants. The specific BSAI groundfish species allocated to the CDQ Program are described in Section II of this preamble. Table 3 summarizes the proposed allocation of BSAI groundfish species and species groups to the nonspecified reserve and the CDQ Program reserve.

TABLE 3.—NONSPECIFIED AND CDQ PROGRAM RESERVES IN THE BSAI

Species or species groups	Allocation to the . . .	
	Nonspecified reserve	CDQ reserves
BS and AI pollock	None	10% of the TAC as a directed fishing allowance.
Fixed gear sablefish (IFQ and CDQ sablefish)	None	20% of the TAC.
Trawl sablefish	15% of the TAC	7.5% of the TAC (7.5% of the TAC remains in the nonspecified reserve).
Amendment 80 species	None	10.7% of the TAC.
Arrowtooth flounder and BS Greenland turbot	15% of the TAC	10.7% of the TAC (4.3% of the TAC remains in the nonspecified reserve).
Species or species groups not allocated to the CDQ Program (See Table 2 for a list).	15% of the TAC	None.

C. PSQ Allocations

1. Halibut PSQ

The Program would increase the allocation of halibut PSQ to the CDQ Program by 50 mt in 2010, the third year after the implementation of the Program. This increase would accommodate projected increases in halibut PSQ needs by the CDQ Program to fully prosecute the increased CDQ allocation of Amendment 80 species. Currently, the CDQ Program is allocated 7.5 percent of the halibut PSC limit under § 679.21(e)(1) for a total of 343 mt. This total is made up of 7.5 percent of the 3,675 mt of halibut PSC allocated to trawl gear, or 276 mt, and 7.5 percent of the 900 mt of halibut PSQ allocated to nontrawl gear, or 67 mt.

Generally, less than half of the halibut PSQ allocation to the CDQ Program has been used in any fishing year. However, CDQ groups have not traditionally harvested their full allocations of species such as rock sole, yellowfin sole, or other Amendment 80 species with higher halibut PSQ use rates. With the implementation of the Program, Amendment 80 vessels may have more flexibility to contract with CDQ groups to fully harvest the CDQ Program groundfish allocations, which may result in higher halibut bycatch. Therefore, the Program would revise § 679.21(e)(1) to continue to allocate 276 mt of the halibut PSC limit allocated to trawl gear to the CDQ Program in 2008 and 2009. This amount would be increased by 50 mt to 326 mt in 2010 and future years. When combined with the 67 mt of halibut PSQ derived from the fixed gear sector, the CDQ Program would receive 343 mt of halibut PSQ in 2008 and 2009, and 393 mt in 2010 and in all future years. Although halibut PSQ is assigned to the CDQ Program from trawl and non-trawl PSC limits, once assigned it is not required to be used in the specific fishery or gear PSC limit from which it is derived.

The amount of trawl halibut PSC for allocation to the Amendment 80 sector and the BSAI trawl limited access sector is described in Section IV of this preamble. The amount of halibut PSC remaining for use by non-trawl gear in non-CDQ Program fisheries would be 833 mt.

2. Non-Chinook Salmon PSQ

The Program would increase the allocation of non-Chinook salmon in proportion to the allocation of Amendment 80 species. Currently, 29,000 non-Chinook salmon are allocated as PSC for use in BSAI trawl fisheries, and 7.5 percent of the total non-Chinook salmon PSC, or 2,175 salmon, is allocated to the CDQ Program as PSQ. The remaining 26,825 non-Chinook salmon are available for use by non-CDQ trawl vessels.

Under the Program, the Council recommended that non-Chinook PSQ be increased to levels proportional to the CDQ allocation of Amendment 80 species. Section 305(i)(1)(B)(ii) of the MSA establishes the allocation of Amendment 80 species to the CDQ Program at 10.7 percent of TAC, therefore the Program would allocate a proportional amount of non-Chinook PSQ equal to 10.7 percent of the trawl PSC limit would be allocated to the CDQ Program. The increase of non-Chinook PSQ would accommodate the larger allocation of BSAI groundfish TAC to the CDQ Program and anticipated increases in PSQ use. The remaining amount of non-Chinook PSC would be assigned to non-CDQ fisheries. The Council did not recommend that the Council increase the Chinook salmon PSQ allocation to the CDQ Program under the Program primarily because Chinook salmon are not typically caught while harvesting Amendment 80 species and an increase in PSQ was not anticipated to be required to accommodate the larger allocation of Amendment 80 species to the CDQ Program.

3. Crab PSQ

Crab PSC for red king crab, *C. bairdi* crab, and *C. opilio* crab is determined during annual harvest specification process based on the biomass of those species. Regulations in § 679.23(e) determine the amount of the crab biomass that may be assigned as a PSC limit. The Program would increase the allocation of crab PSC assigned to the CDQ Program as PSQ in proportion to the allocation of Amendment 80 species. Under the Program, the Council recommended that the CDQ Program's allocation of crab PSQ be increased to levels proportional to the CDQ allocation of Amendment 80 species, which is 10.7 percent of the TAC as established under section 305(i)(1)(B)(ii) of the MSA. Crab species are occasionally caught while fishing for Amendment 80 species and an increase in PSQ would accommodate the increased allocation of Amendment 80 species TAC to the CDQ Program. Therefore, each year, 10.7 percent of each trawl PSC limit for BSAI crab species would be allocated to the CDQ Program and the remaining amount of crab PSC would be apportioned to the Amendment 80 sector and BSAI trawl limited access sector as described in Section IV of this preamble.

D. Monitoring and Enforcement (M&E)

The Program would require that non-AFA trawl catcher/processors participating in the CDQ Program be subject to the same M&E requirements that apply to these vessels while participating in the non-CDQ fisheries in the BSAI. This proposal is consistent with the MSA because it does not result in the regulation of harvest in CDQ fisheries that is more restrictive than the regulation of harvest in the comparable non-CDQ fisheries. The allocation of Amendment 80 species and PSC to the CDQ Program and the Program both require similarly precise management to ensure that the allocations are monitored with sufficient precision to track catch relative to the allocations and assist the management and enforcement of allocations that are exceeded. Allocations to the CDQ Program, and to specific CDQ groups, are similar to allocations to Amendment 80 cooperatives in that the allocations cannot be exceeded. Additionally, it is highly likely many Amendment 80 vessels would be used to fish Amendment 80 species assigned to Amendment 80 cooperatives and the CDQ Program during the same fishing year. Consistent M&E requirements would reduce confusion among industry participants and ensure that Amendment 80 vessels have uniform M&E whenever they are used to fish in the BSAI for both CDQ and non-CDQ fisheries, which simplifies compliance and compliance monitoring.

Current regulations governing harvest by trawl catcher/processors while participating in the CDQ fisheries are found at § 679.32(d)(4) and § 679.50(c)(4)(i)(A). Vessel operators are required to provide (1) at least two level 2 observers, one of whom must be certified as a lead level 2 observer; (2) an observer sampling station; (3) data entry software to transmit observer data to NMFS; and (4) prior notice to the observer of the CDQ group number associated with the catch. In addition, the vessel operator is required to weigh unsorted catch from each CDQ haul on a scale approved by NMFS. Estimates of catch weight by species based on observer data is required to be used to accrue catch against the CDQ group's allocations.

The proposed M&E requirements developed for the Program include additional elements that currently are not in effect for the non-AFA trawl catcher/processors fishing for groundfish CDQ. These additional requirements include special catch handling requirements and a pre-cruise meeting among NMFS staff, the vessel

operator, and the observer(s). The rationale for these additional requirements is described in detail in Section XII of this preamble. Applying these standards to catcher/processor trawl vessels fishing in the CDQ Program would ensure a uniform degree of management precision that NMFS has determined is necessary for the management of multispecies groundfish fisheries and PSC limits with exclusive allocations that cannot be exceeded.

E. Other Revisions

Three other revisions would be made to the CDQ Program regulations. References to the pollock CDQ reserve in § 679.31 would be moved to § 679.20(b) along with specification of all of the other CDQ reserves. This revision would consolidate regulations concerning the groundfish CDQ reserves to one location but would not change the amount of pollock allocated to the CDQ reserves.

Requirements at § 679.5(n)(1) and (2) for the CDQ delivery report and the CDQ catch report would be removed. These reports are required to be submitted by shoreside processors taking deliveries of CDQ groundfish (the CDQ delivery report) or from the CDQ groups (CDQ catch report). All of the information necessary to manage the CDQ fisheries and the individual quota accounts for each CDQ group is already available from the Observer Program or through the Interagency Electronic Reporting System (IERS). Therefore, there reports would no longer be necessary.

Three prohibitions in § 679.7(d) specifically described below would be removed to allow vessels fishing on behalf of the CDQ groups to retain catch of species not allocated to the CDQ Program under the same regulations that apply to the retention of these species in the non-CDQ fisheries. Failure to remove these prohibitions would require vessels fishing on behalf of the CDQ groups to discard all catch of species not allocated to the CDQ Program. In 2006, the CDQ groups caught approximately 3,100 mt of groundfish species that will no longer be allocated to the CDQ Program.

Section 679.7(d)(16) prohibits the operator of a vessel participating in the CDQ fisheries from using any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species. Species that are not allocated to the CDQ Program are considered ''non-CDQ species.'' This prohibition requires discard of all species not allocated to the CDQ Program, even if retention of this species is allowed in the non-CDQ fisheries. Sections 679.7(d)(13) and (14) prohibit catcher vessels from retaining onboard CDQ species together with license limitation groundfish, and prohibit catcher/processors from catching groundfish CDQ species together with license limitation groundfish in the same haul, set, or pot. The intent of these regulations was to separate CDQ and non-CDQ fishing so that all catch while CDQ fishing accrued against CDQ allocations. Now that some of the groundfish species that would be caught in the CDQ fisheries would no longer be considered CDQ species, these prohibitions require that they be discarded.

Removal of these prohibitions would allow retention of the species not allocated to the CDQ Program to be managed under existing regulations that apply to the retention of these species in the non-CDQ fisheries. If the species is open to directed fishing, vessels CDQ fishing may retain as much of the species as they want under the same regulations that apply to vessels participating in the non-CDQ fisheries. If the species is closed to directed fishing but some retention is allowed, vessels CDQ fishing may use retained catch of the species allocated to the CDQ Program as basis species and apply the retainable percentages in Table 40 to part 679 to determine the maximum retainable amount of the species not allocated to the CDQ Program. If the species not allocated to the CDQ Program is on prohibited status, any vessel CDQ fishing would be required to discard all catch of this species, as are all other vessels in the non-CDQ fisheries.

NMFS also proposes removing specific references to groundfish CDQ reserve allocations in § 679.31. Currently, § 679.31 contains only limited regulation concerning the management of non-pollock groundfish CDQ reserves. Currently, the allocation of non-pollock groundfish species TAC to the CDQ Program is primarily regulated in § 679.20. Section 679.20 contains most of the regulations addressing CDQ reserve management. To reduce redundancy in regulations, and combine the allocation of TAC into one section, NMFS proposes removing specific references to non-pollock groundfish in § 679.31(c) and (f).

IV. Allocations of ITAC and PSC

A. Apportionment of ITAC Between the Sectors

1. Species Allocated

The Council recommended that five species, AI Pacific ocean perch, Atka mackerel, flathead sole, rock sole and yellowfin sole be allocated between the Amendment 80 and BSAI trawl limited access sectors. A large proportion of the TAC of these five species have been caught by Amendment 80 vessels, and those species comprise the majority of the catch by these vessels. A smaller portion of the TAC has been caught by the BSAI trawl limited access sector. The catch of these five species by non-trawl vessels is minimal. Greater detail about the historic and recent catch of these species can be found in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

The Council motion recommending the Program did not explicitly refer to Pacific cod as an Amendment 80 species. The Council motion recommended that ''in the event that the [Amendment 80] sector receives an exclusive allocation of Pacific cod, that allocation would be divided between the cooperatives and the [Amendment 80] sector's limited access fishery in the same manner (and based on the same history) as the division of other allocated species within the [Amendment 80] sector.'' Amendment 85 as approved by the Secretary establishes allocations for the non-CDQ fishery sectors and specifically an allocation to the non-AFA trawl catcher/processors (i.e., Amendment 80 sector). The Council's recommendation to allocate a percentage of the Pacific cod TAC to the Amendment 80 sector was provided in Amendment 85 to the FMP. The Secretary approved the portion of Amendment 85 that allocates a portion of the Pacific cod TAC to the Amendment 80 sector on March 7, 2007. As a result of the Secretary's decision on Amendment 85, this proposed rule would include Pacific cod as an Amendment 80 species. The draft EA/RIR/IRFA prepared for the Program notes that Pacific cod would be allocated and largely managed as all other Amendment 80 species pending Secretarial approval of Amendment 85. Specific detail concerning the management of Pacific cod under the Program is provided in Part D of this section of the preamble.

2. ITAC Allocation Process

During the annual harvest specification process, NMFS would establish the TAC for all Amendment 80 species. After accounting for allocations to the CDQ Program as described in Section II to this preamble, and the ICA set aside for the incidental harvests of Amendment 80 species by the non-trawl gear sectors (e.g., pot, and hook-and-line gear) and the BSAI trawl limited access fishery while targeting other groundfish species, the remaining amount of the

TAC, the ITAC, would be apportioned to the Amendment 80 and BSAI trawl limited access sectors in proportions recommended by the Council.

The Council recommended establishing an ICA for the non-trawl and BSAI trawl limited access sector before allocating a portion of the TAC to the Amendment 80 and BSAI trawl limited access sector for several reasons. First, because the Program would allocate a fixed amount of the TAC to the Amendment 80 and BSAI trawl limited access sectors, NMFS would need to account for any ICA in the non-trawl fisheries before those apportionments could be made. Otherwise, incidental catch by non-trawl vessels could reduce the amount of TAC available to the trawl sectors. This would be particularly problematic for Amendment 80 cooperatives that would be allocated a fixed percentage of the TAC as CQ. If that CQ amount were reduced by incidental catch in non-trawl fisheries, an Amendment 80 cooperative theoretically would have its exclusive allocation reduced by persons who are not members of the cooperative. Second, the Council perceived the percentage of the TAC assigned to the BSAI trawl limited access sector as an amount necessary to support directed fishing, not as an amount intended to support both directed and incidental catch. Therefore, the Program would establish an ICA to accommodate incidental catch for non-trawl gear and BSAI trawl limited access fisheries.

For most species, the allocations of ITAC to the Amendment 80 and BSAI trawl limited access sectors would be apportioned as fixed percentages of the ITAC, with the exception of Atka mackerel, AI POP, and yellowfin sole. A portion of the Amendment 80 sector's allocation of Atka mackerel and AI POP ITAC would be gradually increased for the BSAI trawl limited access sector, and decreased for the Amendment 80 sector until a fixed percentage of the ITAC is assigned to each sector after several years. Table 4 details the allocations of Amendment 80 species, except yellowfin sole.

TABLE 4.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS (EXCEPT YELLOWFIN SOLE)

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka mackerel	543	All years	100	0
	542	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
	541/EBS	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
Aleutian Islands	543	All years	98	2
Pacific ocean perch	542	2008	95	5
		2009 and all future years	90	10
	541	2008	95	5
		2009 and all future years	90	10
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0
Flathead sole	BSAI	All years	100	0

The proportion of yellowfin sole ITAC allocated between the Amendment 80 and BSAI trawl limited access sectors would fluctuate with the TAC. Table 34 to part 679 in the proposed regulatory text details the incremental increase of reallocation of yellowfin sole ITAC from the Amendment 80 sector to the BSAI trawl limited access sector as ITAC increases. The proportion of the ITAC assigned to the BSAI trawl limited access sector increases as ITAC increases. Section XI of this preamble provides an example of the calculation of the yellowfin sole ITAC and Table 5 describes the calculation process.

TABLE 5.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between. . .	and. . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is. . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is. . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is. . .
	Column A	Column B	Column C	Column D	Column E
Row 1	0 mt	87,499 mt	0.93	ITAC × Row 1, Column C	ITAC—Row 1, Column E.

TABLE 5.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Row No.	If the yellowfin sole ITAC is between. . .	and. . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is. . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is. . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is. . .
	Column A	Column B	Column C	Column D	Column E
Row 2	87,500 mt	94,999 mt	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column c) + (Row 1, Column D).	ITAC—Row 2, Column D.
Row 3	95,000 mt	102,499 mt	0.82	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + (∑ Column D, Rows 1 and 2).	ITAC—Row 3, Column D.
Row 4	102,500 mt	109,999 mt	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + (∑ Column D, Rows 2 through 3).	ITAC—Row 4, Column D.
Row 5	110,000 mt	117,499 mt	0.71	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + (∑ Column D, Rows 2 through 4).	ITAC—Row 5, Column D.
Row 6	117,500 mt	124,999 mt	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + (∑ Column D, Rows 2 through 5).	ITAC—Row 6, Column D.
Row 7	125,000 mt and greater		0.60	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + (∑ Column D, Rows 2 through 6).	ITAC—Row 7, Column D.

B. PSC Apportionment to the CDQ Program and Between the Sectors

Based on the rationale provided during the development of the Program, and in consideration of the MSRA, PSC would be assigned to the CDQ Program, and apportioned between the Amendment 80 sector and BSAI trawl limited access sector as described in Table 6.

TABLE 6.—APPORTIONMENT OF BSAI CRAB AND HALIBUT PSC

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* bycatch limitation zone (COBLZ) PSC limit . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit . . .			
CDQ Program	2008 and 2009	343 mt	10.7%	10.7%	10.7%	10.7%
	2010 and future	393 mt				
			as a percentage of the total BSAI trawl PSC limit after subtraction for the allocation to the CDQ Program as PSQ . . .			
Amendment 80 sector	2008	2,525 mt	62.48%	61.44%	52.64%	29.59%
	2009	2,475 mt	59.36%	58.37%	50.01%	28.11%
	2010	2,425 mt	56.23%	55.30%	47.38%	26.63%
	2011	2,375 mt	53.11%	52.22%	44.74%	25.15%
	2012 and future	2,325 mt	49.98%	49.15%	42.11%	23.67%
BSAI trawl limited access sector.	All years	875 mt	30.58%	32.14%	46.99%	46.81%

TABLE 6.—APPORTIONMENT OF BSAI CRAB AND HALIBUT PSC—Continued

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* by-catch limitation zone (COBLZ) PSC limit . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit . . .			
Unassigned-reduction in PSC.	2008	0 mt	6.94%	6.42%	0.37%	23.60%
	2009	50 mt	10.06%	9.49%	3.00%	25.08%
	2010	50 mt	13.19%	12.56%	5.63%	26.56%
	2011	100 mt	16.31%	15.64%	8.27%	21.66%
	2012 and future	150 mt	19.44%	18.71%	10.90%	29.52%

As is evident from Table 6, a portion of the annual halibut PSC and crab PSC available for use by the Amendment 80 sector would be reduced over time and a portion of this PSC would not be assigned for use. This unassigned halibut and crab PSC is ''left in the water'' and may contribute to the overall halibut and crab biomass available for future recruitment or harvest. The halibut PSC assigned to the CDQ Program as halibut PSQ would increase in third year after implementation of the Program (see Section III for more detail). Overall, the portion of the halibut PSC limit for trawl gear that would not be assigned on an annual basis is shown in the ''Unassigned-Reduction in PSC'' row in Table 6. This unassigned halibut PSC represents an overall savings in the amount of trawl halibut PSC used by the trawl fisheries. Fishing practices by Amendment 80 cooperatives (e.g., avoiding areas of high bycatch through voluntary intercooperative arrangements, modifying fishing gear, etc.) could result in additional reductions in crab PSC or halibut PSC use, but those amounts cannot be predicted at this time.

C. Rationale for Allocations

The Program would allocate a specific proportion of the annual ITAC and PSC to the Amendment 80 sector and BSAI trawl limited access sector. Generally, the Council used historic groundfish catch and PSC use patterns during the 1998 through 2004 time period as the basis for recommended allocations, with modifications made to accommodate specific harvest patterns and fishery dependent communities. The Council also considered more recent harvest patterns (2005 and 2006). Table 7 provides key rationale developed by the Council for the specific allocations of ITAC and PSC to the Amendment 80 and BSAI trawl limited access sectors that would be implemented by the Program. Additional details on the basis for the allocations between the Amendment 80 and BSAI trawl limited access sectors are provided in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

TABLE 7.— KEY RATIONALE FOR ITAC AND PSC ALLOCATIONS TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Amendment 80 species	Rationale
Yellowfin sole	(1) Historic (1998 through 2004) and recent (2005 and 2006) catch data indicate that Amendment 80 vessels caught and retained a high proportion (on average in excess of 90 percent during the 1998 through 2004 and 2005 and 2006 time periods) of the yellowfin sole TAC. (2) Prior to 1998, and the current high pollock TAC levels, yellowfin sole comprised a larger proportion of the overall BSAI groundfish biomass. During this time the BSAI trawl limited access sector relied more heavily on yellowfin sole harvests and caught and retained a greater proportion of the yellowfin sole TAC than currently. (3) Apportioning ITAC on a sliding scale between the Amendment 80 and BSAI trawl limited access sectors as yellowfin sole biomass increases would accommodate potential future changes in the relative TACs of pollock and yellowfin sole and would provide greater harvest opportunities to the BSAI trawl limited access sector that are similar to pre-1998 harvest patterns.
Pacific cod	Pacific cod allocations to the Amendment 80 sector are based on the criteria and rationale established under Amendment 85 to the FMP (Notice of Availability of Amendment 85 to the FMP (NOA) published December 7, 2006; 71 FR 70943) and approved by the Secretary on March 7, 2007.
AI POP and Atka mackerel.	(1) Historic (from 1998 through 2004) and more recent (2005 and 2006) catch data indicate that the Amendment 80 sector caught and retained nearly 100 percent of the TAC of these species in all management areas. (2) AI POP in Areas 541 and 542, and Atka mackerel in Areas BS/541 and 542 may be harvested by smaller trawl vessels, primarily operating out of Adak, Alaska. These smaller trawl vessel operators expressed a desire to harvest Atka mackerel during the development of the Program. (3) A specific allocation to the BSAI trawl limited access sector would provide additional opportunities for harvest by smaller trawl vessels. The total allocation to the BSAI trawl limited access sector would increase slightly each year to provide the BSAI trawl limited access sector time to scale operations up to the level of the allocation.
Flathead sole and rock sole.	(1) Historic (from 1998 through 2004) and more current catch data (2005 and 2006) indicate that the Amendment 80 sector caught and retained nearly 100 percent of the TAC of these species. (2) There was no clear indication that non-Amendment 80 sector participants intended to enter these fisheries in the foreseeable future.
Halibut PSC	(1) Halibut PSC would be assigned to the BSAI trawl limited access fishery at a percentage that would accommodate existing halibut PSC rates as well as increased halibut PSC use if the yellowfin sole ITAC increases and a larger proportion of yellowfin sole is assigned to the sector. (2) Halibut PSC would be assigned to the Amendment 80 sector at an amount above current use, therefore accommodating existing and projected halibut PSC needs.

TABLE 7.— KEY RATIONALE FOR ITAC AND PSC ALLOCATIONS TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Amendment 80 species	Rationale
	(3) Starting in 2009, the allocation of halibut PSC to the Amendment 80 sector would be reduced in a stepwise manner ultimately resulting in an annual reduction of 200 mt of halibut PSC from the Amendment 80 sector. Combined with all other halibut PSC allocations to the CDQ program and the BSAI trawl limited access sector, the halibut PSC allocation proposed by the Program results in a total reduction of the annual trawl halibut PSC limit by 150 mt after 2011. This reduction would meet a clear goal for the Program to reduce the use of halibut PSC by the Amendment 80 sector. The step-wise reduction would provide the Amendment 80 sector time to adjust fishing operations through more efficient operations (e.g., cooperative management) to offset any additional potential costs. (4) The halibut PSC savings resulting from the reduced trawl halibut limit assigned to the Amendment 80 sector would represent a savings of halibut biomass that could contribute to future halibut recruitment.
Crab PSC	(1) Crab PSC assigned to the BSAI trawl limited access fishery would accommodate existing and projected PSC use. The amount of crab PSC allocated is equal to the sum of the AFA catcher/processor and catcher vessel crab PSC sideboard limits. 2) Crab PSC assigned to the Amendment 80 sector would accommodate existing and projected future PSC use. Starting in 2009, the amount allocated would be reduced by five percent of the initial allocation for four years (until 2012) resulting in a 20 percent reduction in the amount of crab PSC allocated to the Amendment 80 sector. This reduction would meet a clear goal for the Program to reduce the use of crab PSC by the Amendment 80 sector. The step-wise reduction would provide the Amendment 80 sector time to adjust fishing operations through more efficient operations (e.g., cooperative management) to offset any additional potential costs. (3) The crab PSC savings resulting from the reduced trawl crab limit assigned to the Amendment 80 sector would represent a savings of crab biomass that could contribute to future crab recruitment.

D. Integrating Amendment 85 and the Program

1. Overview

During the development of Amendment 80, the Council recommended a separate action, Amendment 85 to the FMP, to revise allocations of Pacific cod among the many BSAI groundfish sectors. The Council took final action to recommend Amendment 85 in April 2006, and final action to recommend the Program in June 2006. NMFS published a NOA for Amendment 85 to the FMP on December 7, 2006 (71 FR 70943). The public comment period for the NOA ended on February 5, 2007. NMFS published a proposed rule to implement Amendment 85 on February 7, 2007 (72 FR 5654). The public comment period for the proposed rule ended on March 26, 2007. Amendment 85 was partially approved by the Secretary on March 7, 2007. The Secretary approved all of the provisions concerning allocation of Pacific cod to the non-CDQ sectors. Public comments on the proposed rule have been received, NMFS is reviewing those comments, and the final rule implementing Amendment 85 is anticipated to be published in July 2007.

The Council and NMFS recognized that specific aspects of Amendment 85 would need to be integrated with the Program if allocations of Pacific cod under Amendment 85 were approved. The following section describes NMFS' attempt to coordinate the proposed implementation of Amendment 85 and the Program to be consistent with the intent of both actions. The five key elements of Amendment 85 that would be addressed in this proposed action are (1) The allocation of Pacific cod to the Amendment 80 sector; (2) the seasonal apportionment of Pacific cod allocated to the Amendment 80 sector; (3) the rollover of unused Pacific cod to the Amendment 80 sector; (4) PSC apportionment; and (5) the AFA sideboard limits that apply to Pacific cod.

2. Allocation of Pacific Cod to the Amendment 80 Sector

Amendment 85 as approved by the Secretary defines the allocations of BSAI Pacific cod to nine harvesting sectors which are listed in Table 8. The non-AFA trawl catcher/processor sector as defined in Amendment 85 is identical to the Amendment 80 sector proposed under the Program.

TABLE 8.—PERCENT SECTOR ALLOCATIONS OF BSAI PACIFIC COD NON-CDQ TAC APPROVED UNDER AMENDMENT 85

Sector	Percent allocation
Jig	1.4
Hook-and-line & pot catcher vessels <60 ft LOA	2.0
Hook-and-line catcher vessels ≥60 ft LOA	0.2
Hook-and-line catcher/processors	48.7
Pot catcher vessels ≥60 ft LOA	8.4
Pot catcher/processors	1.5
AFA trawl catcher/processors	2.3
Non-AFA trawl catcher/processors (Amendment 80 Sector)	13.4
Trawl catcher vessels	22.1

The Program would not modify the allocations of Pacific cod to the Amendment 80 sector or other fishing sectors as approved under Amendment 85. The Program would incorporate Amendment 85's allocation of 13.4 percent of the non-CDQ TAC as the Amendment 80 sector ITAC.

Amendment 85 did not establish an ICA for Pacific cod that is deducted before the allocation of the non-CDQ TAC. The Program does establish an ICA for all Amendment 80 species except Pacific cod that is subtracted from the non-CDQ TAC before it is

assigned to the Amendment 80 and BSAI trawl limited access sectors. The Council did not recommend that the Program establish an ICA for Pacific cod that would be deducted from the TAC before allocation to the Amendment 80 sector. Therefore, the Program would not establish an ICA that would be deducted prior to allocation of Pacific cod among the sectors. Amendment 85 would establish an ICA specific to the pot and hook-and-line sector, but that ICA is derived from the allocation to those sectors and is not deducted from the non-CDQ TAC before allocations to the Amendment 80 sector. The pot and hook-and-line ICA proposed under Amendment 85 would not affect the allocation of Pacific cod TAC to the Amendment 80 sector.

Based on the allocations proposed under Amendment 85 and approved by the Secretary and the lack of any contrary guidance under the Council's recommendation for the Program, NMFS does not propose modifying the allocation of Pacific cod to the non-CDQ sectors as approved under Amendment 85. Further, NMFS would not propose establishing a Pacific cod ICA that would be deducted from the TAC prior to allocation among the trawl sectors under the Program.

3. Seasonal Apportionment of Pacific Cod Allocated to the Amendment 80 Sector

The Program recommended by the Council would not propose changing the current seasonal apportionment of Pacific cod established in regulation at § 679.23(e)(5). Currently, there are three seasons (A, B, and C season) for Pacific cod applicable to non-AFA catcher/processor vessels using trawl gear (i.e., the Amendment 80 sector). However, the proposed rule to implement Amendment 85 would modify the current seasonal apportionment of Pacific cod to establish two seasons (A and B seasons) for non-AFA trawl catcher/processors. This seasonal apportionment would supersede existing regulations. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the seasonal apportionment of Pacific cod for non-AFA trawl catcher/processors (i.e., the Amendment 80 sector) in the final rule for Amendment 80 to ensure compliance with the regulations that may be implemented for Amendment 85. Seasonal apportionment of Pacific cod for all other non-Amendment 80 sectors would not be modified by the Program.

3. Rollover of Unused Pacific Cod to the Amendment 80 Sector

The proposed rule for Amendment 85 would create a complex mechanism to redistribute, or rollover, Pacific cod that is projected to be unharvested by a sector. If the rollover provisions in the proposed rule for Amendment 85 are implemented as proposed, NMFS anticipates that the final rule to implement the Program would modify these rollover provisions in the following manner.

First, Pacific cod would not be rolled over from the Amendment 80 sector to other sectors listed in Table 8 above. This would be consistent with the approach the Council recommended for all other Amendment 80 species. Additionally, as described in more detail in the draft EA/RIR/IRFA prepared for the Program, NMFS has identified the particular difficulties that would arise in determining amounts of Pacific cod that would go unharvested when that Pacific cod is assigned as CQ to an Amendment 80 cooperative. Briefly, NMFS could not easily establish criteria to determine that CQ would not be used. An amount of CQ can be harvested throughout the year and can be traded among cooperatives reducing the likelihood that it would not be harvested.

Second, rollovers of unharvested Pacific cod to the Amendment 80 sector from any of the eight other sectors listed in Table 8 above would be assigned only to Amendment 80 cooperatives. This approach would be consistent with the mechanism to rollover to the Amendment 80 sector other Amendment 80 species that are unharvested in the BSAI trawl limited access sector. The Council did not provide specific guidance to suggest that Pacific cod would be subject to different reallocation procedures than other species. Section VII of this preamble provides additional detail on the reallocation of Amendment 80 species to the Amendment 80 sector.

4. PSC Apportionment

The proposed rule for Amendment 85 would create a complex mechanism for apportioning crab PSC and halibut PSC among the nine sectors listed in Table 8. If the halibut PSC and crab PSC provisions in the proposed rule for Amendment 85 are implemented as proposed, NMFS anticipates that the final rule to implement the Program would modify the PSC apportionments.

During the development of the Program, the Council deliberated extensively on the method to apportion crab PSC and halibut PSC among the trawl sectors. During these deliberations, the Council noted that many of the crab PSC and halibut PSC apportionments proposed under Amendment 85 would be superceded by the Program. The Council motion recommending the Program specifically noted that ''upon implementation of [the Program], no allocation of PSC will be made to the [Amendment 80] sector under Amendment 85.'' Should the PSC apportionments in proposed rule for Amendment 85 be implemented, the final rule to implement the Program would substantially revise those regulations to be consistent with the Council's clear intent for the Program. Additionally, because the Program recommended specific allocations of crab PSC and halibut PSC to the BSAI trawl limited access sector, the PSC apportionments for the trawl fisheries contemplated in the proposed rule for Amendment 85 may need to be revised in the a final rule that would implement the Program.

5. Pacific Cod AFA Sideboard Limits

The Council extensively reviewed Pacific cod AFA sideboard limits during the development of Amendment 85. The proposed rule for Amendment 85 would modify Pacific cod AFA sideboard limits for the AFA catcher/processor sector. The proposed rule for Amendment 85 would not modify existing regulations for AFA catcher vessels.

NMFS does not propose modifying the AFA Pacific cod sideboard limits with this action. Although the Council recommended that the Program would modify the AFA sideboard limits for all Amendment 80 species, it is not clear that the Council considered Pacific cod to be an Amendment 80 species for purposes of applying this provision. Clearly, the Council intended to allocate Pacific cod to the Amendment 80 sector and assign QS pending the Secretarial approval of Amendment 85 that provided an allocation of Pacific cod to the Amendment 80 sector. However, it does not appear the Council intended to apply all of the provisions applicable to other species (i.e., AI POP, Atka mackerel, flathead sole, rock sole, and yellowfin sole) that were clearly identified by the Council during the development of the Program as being ''Amendment 80 species,''including proposing a new method to calculate AFA sideboard limits.

Additionally, it does not appear to be the intent of the Council action recommending the Program in June 2006 to supersede the action recommended by the Council in Amendment 85 in April 2006.

Therefore, AFA sideboard limit calculations for Pacific cod would not be modified under the Program consistent with the apparent intent of the Council. Additionally, this approach would avoid confusion that may arise if a final rule to implement Amendment 85 is published that eliminates AFA catcher/processor sideboards, only to be superseded shortly thereafter by a final rule to implement the Program that would reinstate the AFA catcher/processor sideboard limits and change the means to calculate that limit.

Section XI of this preamble provides an example of the Pacific cod AFA sideboard limits that would apply in 2008 should this aspect of the final rule for Amendment 85 be implemented as proposed.

6. Regulatory Text Contained in This Proposed Rule

To minimize potential confusion and better coordinate Amendment 85 and this proposed action, NMFS proposes the following modifications in this proposed rule: (1) Remove and reserve those sections of the regulations in § 679.20(a)(7)(i), (a)(7)(ii), (a)(7)(iii)(B), and (a)(7)(iv) that are proposed to be modified by the proposed rule for Amendment 85; (2) insert regulatory text to implement the allocation of Pacific cod to the Amendment 80 sector in § 679.20(a)(7)(v); (3) insert regulatory text in § 679.20(a)(7)(v) that references the existing seasonal apportionment of Pacific cod; (4) insert regulatory text in § 679.20(a)(7)(v) addressing the reallocation of unharvested Pacific cod to Amendment 80 cooperatives; and (5) remove references to the apportionment of Pacific cod from the nonspecified reserve in § 679.20(b)(1)(iv) consistent with the management of the nonspecified reserve for all other Amendment 80 species (see Section III of this preamble for more detail). In addition, if the proposed rule for Amendment 85 is implemented as proposed, the changes to Pacific cod seasonal apportionments proposed in the Program would need to be revised.

Regulatory text to allocate Pacific cod QS among Amendment 80 sector participants, assign Pacific cod ITAC to Amendment 80 cooperatives and the Amendment 80 limited access sector, and assign PSC to support Pacific cod fisheries by Amendment 80 sector participants is proposed in § 679.90 and § 679.91 of this proposed rule and would not be affected by the provisions in the final rule for Amendment 85.

7. Summary Table

Table 9 summarizes the proposed integration of key components of Amendment 85 and the Program rule making process.

TABLE 9.—INTEGRATION OF REGULATORY TEXT FOR AMENDMENT 85 AND THE PROGRAM

Issue	Proposed rule for Amendment 85	Proposed rule for the Program (Amendment 80)
Allocation of Pacific cod to the Amendment 80 sector.	Allocations described in Table 8 have been approved by the Secretary. 13.4% of the BSAI TAC after subtraction of the allocation to the CDQ Program would be allocated to the Amendment 80 sector.	The proposed rule would not modify the allocations approved by the Secretary under Amendment 85 described in Table 8.
Seasonal apportionment of Pacific cod.	The proposed rule would change seasonal apportionments for the CDQ Program, Amendment 80 sector, and other participants in the Pacific cod fishery from the status quo. The proposed rule would apportion the Amendment 80 allocation into two seasons: 75 percent to an A season, and 25 percent to a B season. These seasons would be defined in the annual harvest specification process.	The proposed rule would not change the status quo seasonal apportionment of Pacific cod to the Amendment 80 sector. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the seasonal apportionment for Pacific cod for non-AFA trawl catcher/processors (i.e., Amendment 80 sector) in the final rule for Amendment 80. Seasonal apportionment of Pacific cod for all other sectors would not be modified by the Program.
Rollover of unused Pacific cod.	The proposed rule would require that Pacific cod unharvested by the trawl sectors (including the Amendment 80 sector) would be reallocated first to the non-trawl catcher vessel sectors defined in Table 8 above. Any Pacific cod that is unharvested by the non-trawl catcher vessel sectors, or non-trawl catcher/processors sectors could be reassigned to the Amendment 80 sector.	The proposed rule does not modify existing regulations. If the proposed rule for Amendment 85 is implemented as proposed, NMFS would modify the Pacific cod rollover provisions. The final rule for the Program would prohibit the reallocation of Pacific cod to the Amendment 80 sector. In addition, the final rule for the Program would require that any unharvested Pacific cod that is reallocated to the Amendment 80 sector be allocated only to Amendment 80 cooperatives.
Allocations of crab PSC and halibut PSC.	The proposed rule would allocate halibut PSC and crab PSC for specific use by participants in each of the nine sectors defined in Table 8 above.	The proposed rule would allocate halibut and crab PSC to the Amendment 80 and BSAI trawl limited access sectors to support PSC needs in all fisheries for those sectors. The Program would supersede halibut PSC and crab PSC allocations for trawl gear sectors proposed that may be implemented with the final rule for Amendment 85.
AFA sideboard limits for Pacific cod.	The proposed rule would eliminate the Pacific cod sideboard limits applicable to AFA catcher/processors. The proposed rule would not modify existing Pacific cod sideboard limits for AFA catcher vessels.	The proposed rule would not modify AFA sideboard limits for Pacific cod.

V. BSAI Trawl Limited Access Sector

The Program would affect the management of non-Amendment 80 sector trawl fisheries in several ways because it: (1) Allocates a portion of the ICA and ITAC for Amendment 80 species, halibut PSC, and crab PSC limits to the BSAI trawl limited access sector; (2) modifies AFA groundfish

sideboard calculation methods for Amendment 80 species in the BSAI; (3) modifies the AFA sideboard limits for halibut PSC and crab PSC in the BSAI; (4) removes AFA sideboard limits for yellowfin sole at high ITAC levels in the BSAI; (5) modifies the mechanism for reallocating Pacific cod within the trawl sector in the BSAI; and (6) modifies the calculation for determining the maximum crab PSC use in the RKCSS. The Program's proposed allocation of ICA, ITAC, and PSC to the BSAI trawl limited access sector and the proposed changes on AFA sideboard calculations would have specific effects on non-AFA trawl catcher vessels. NMFS notes that AFA sideboard limits for groundfish and PSC in the GOA would not be affected by the Program. Finally, the proposed regulations would limit the ability of Amendment 80 vessels to process fish harvested in the BSAI trawl limited access sector.

A. Allocations to BSAI Trawl Limited Access Sector

1. Amendment 80 Species Allocations

For all Amendment 80 species, NMFS would assign ITAC to the Amendment 80 sector and the BSAI trawl limited access sector. Section IV of this preamble describes the specific allocation and rationale for the allocation of ITAC for each Amendment 80 species to the BSAI trawl limited access sector.

For all Amendment 80 species except Pacific cod, NMFS would allocate a portion of the ICA for use by non-trawl gear and the BSAI trawl limited access sector in the annual harvest specification process. The amount of ICA assigned for use by non-trawl fisheries and the BSAI trawl limited access sector would be based primarily on recent and anticipated incidental catch rates by the non-trawl fisheries and BSAI trawl limited access sector of that Amendment 80 species. To ensure adequate flexibility in managing incidental harvests in the BSAI, NMFS proposes to combine the ICA required for the non-trawl fisheries for each Amendment 80 species, except Pacific cod, into the ICA required for the BSAI trawl limited access sector and establish a single combined trawl and non-trawl ICA in the annual harvest specifications. Given the small incidental harvest rates of Amendment 80 species anticipated in non-trawl fisheries (*e.g.*, yellowfin sole incidentally harvested in the hook-and-line Pacific cod fishery), the portion of the ICA that is required for use in the non-trawl fisheries would be small relative to the total combined ICA.

The portion of the combined ICA not intended for use by non-trawl fisheries would be intended for use by the BSAI trawl limited access sector. The portion of the ICA that is intended for use by the BSAI trawl limited access sector would be subject to rollover to Amendment 80 cooperatives, as discussed in Section VII of this preamble. NMFS would ensure that adequate ICA is available to the non-trawl fisheries and BSAI limited access sector before conducting any rollover of unused ICA to Amendment 80 cooperatives. Section XI of this preamble provides a specific example of assigning an ICA to each Amendment 80 species. As discussed in Section IV of this preamble, NMFS would not establish a Pacific cod ICA for use by trawl gear.

2. Halibut PSC Allocation

The halibut PSC limit for the BSAI trawl limited access sector would be a fixed amount of 875 metric tons (mt). This amount is deemed necessary to support all halibut PSC needs for harvest of pollock, Amendment 80 species and non-Amendment 80 species (*e.g.*, Alaska plaice). The Council recommended that the allocation be based on historic halibut PSC use rates from 1998 through 2004, with an additional amount allocated that would support future increased harvests of Amendment 80 species with higher halibut PSC use rates (*e.g.*, yellowfin sole). The halibut PSC allocated to the BSAI trawl limited access sector under the Program would supercede any halibut trawl PSC allocation mechanism that may be implemented under Amendment 85 as discussed in Section IV of this preamble.

3. Crab PSC Allocations

Crab PSC allocations to the BSAI trawl limited access sector would be based on the sum of the percentage of the trawl crab PSC sideboard limit assigned to the AFA catcher/processor and catcher vessel sectors. Crab PSC use in the BSAI trawl limited access sector, which includes AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels, has been small relative to the total crab PSC assigned for use by vessels using trawl gear.

The BSAI trawl limited access sector, which includes non-AFA catcher vessels, has consistently used less crab PSC than the combined percentage of the AFA catcher/processor and catcher vessel crab PSC sideboard limits. Therefore, an allocation of crab PSC to the BSAI trawl limited access sector based on the sum of the AFA crab PSC sideboard limits would be sufficient to accommodate current and future crab PSC use by the BSAI trawl limited access sector. The amount of crab PSC assigned to the BSAI trawl limited access sector would continue to be apportioned to specific trawl fisheries for the BSAI trawl limited access sector (e.g., crab PSC would be assigned for use in yellowfin sole fisheries) as part of the annual harvest specifications process. Section XI of this preamble provides a specific example of crab PSC allocation to the BSAI trawl limited access sector.

B. Calculation of AFA Groundfish Sideboard Limits in the BSAI

The Program would modify the calculation of BSAI groundfish sideboard limits for Amendment 80 species that apply to AFA vessels. AFA catcher/processor and AFA catcher vessel sideboard limits would remain in place to prevent the AFA sectors from exceeding their historical catch history prior to the implementation of the AFA. These limits would constrain AFA vessels participating in the BSAI trawl limited access sector relative to non-AFA catcher vessels. However, the method for calculating those sideboard limits would be modified to accommodate changes in allocations for Amendment 80 species. The Program would not modify the calculation of AFA sideboard limits for non-Amendment 80 species (e.g., arrowtooth flounder).

Currently, NMFS calculates AFA sideboard limits for BSAI groundfish species by multiplying the AFA sideboard ratio for that species by the TAC available for harvest by trawl catcher/processors or catcher vessels in the year in which the harvest limit will be in effect. The exception to this rule is the calculation of the Atka mackerel sideboard limit for AFA catcher/processors, which is set as a fixed percentage of the TAC under regulations at § 679.64(a)(3). The Atka mackerel sideboard limit for AFA catcher/processors would not be modified by the Program. The Program would modify the Atka mackerel sideboard limit for AFA catcher vessels.

The allocation of exclusive harvest privileges to the Amendment 80 sector substantially reduces the amount of ITAC available for harvest by other trawl vessels. The portion of the ITAC assigned to the Amendment 80 sector would not be available to other participants, thereby limiting the ITAC available to the BSAI limited access sector. If NMFS were to calculate the AFA groundfish sideboard limits for Amendment 80 species based only on the portion of the ITAC that would be assigned to the BSAI trawl limited

access fishery, the AFA sideboard limits for Amendment 80 species would constrain the AFA fleet substantially beyond the degree intended under the AFA. Furthermore, this would create the potential for substantial portions of the BSAI trawl limited access sector allocation of Amendment 80 species to remain unharvested because only the limited number of non-AFA trawl catcher vessels would be able to harvest it once the AFA sideboard limits had been reached.

The Council expressed concern over the potential for unharvested catch in the BSAI trawl limited access sector. The Program would address this concern by amending the AFA sideboard regulations. AFA sideboard limits for Amendment 80 species, except Pacific cod and AFA catcher/processor sideboards for Atka mackerel, would be calculated by multiplying the sideboard ratio for a given groundfish species set forth in § 679.64 by the TAC remaining after the allocation of 10.7 percent of the TAC to the CDQ Program has been deducted. Depending on the portion of ITAC allocated to the trawl limited access fishery, the sideboard limits for some of the Amendment 80 species will be greater than the allocation. For example, the combined AFA catcher/processor and AFA catcher vessel yellowfin sole sideboard limit for the AFA sectors is approximately 29 percent of the TAC after allocation to the CDQ Program. Any allocation of yellowfin sole to the BSAI trawl limited access sector less than 29 percent of the ITAC would result in sideboard limit amounts greater than the allocation and would not be constraining. The potential effects of modifying AFA sideboard limits on non-AFA trawl catcher vessels in the BSAI trawl limited access sector is addressed in Part G of this section of the preamble.

C. AFA Sideboard Limits for Halibut and Crab PSC in the BSAI

1. AFA Halibut PSC Sideboard Limits

The Program would modify AFA PSC sideboard limits in the BSAI. Under current regulations, AFA halibut PSC sideboard limits for catcher vessels are assigned to specific fishery complexes. A total of 875 mt of halibut PSC would be assigned to the BSAI trawl limited access sector, which would be further apportioned among specific fishery complexes (e.g., Pacific cod, yellowfin sole).

Currently, AFA halibut PSC sideboard limits are calculated based on a proportion of the halibut PSC available to either catcher/processors or catcher vessels. As noted in the previous section, this calculation method would result in sideboard limits for AFA catcher vessels being set based on a proportion of the 875 mt limit established for the BSAI trawl limited access sector. Computing halibut PSC limits for AFA catcher vessels based on a proportion of 875 mt would result in small sideboard limits that would substantially constrain harvests by AFA catcher vessels. The Program would address this concern by fixing the halibut PSC sideboard limits for AFA catcher/processors and AFA catcher vessels in each fishery complex in the BSAI at the levels established in the 2006 and 2007 final harvest specifications (March 3, 2006; 71 FR 10894) and listed in Table 40 to part 679 in the proposed regulatory text.

Once the overall AFA halibut PSC sideboard limit is established in regulation, NMFS would apportion the amount of halibut PSC sideboard for the yellowfin sole and the rock sole/flathead sole/other flatfish categories by season through the annual specification process, which is the current practice. Setting the AFA catcher vessel halibut PSC sideboard limit at a fixed limit reflective of past AFA sideboard limits would prevent AFA catcher vessels from being unduly constrained relative to PSC limits.

Fixing the AFA catcher/processor sideboard limits at a fixed amount based on the 2006 and 2007 final harvest specifications would prevent AFA catcher/processors from being unduly constrained by halibut PSC sideboard limits. Current regulations in § 679.64(a)(5) compute the AFA catcher/processor halibut PSC sideboard limit as a fixed ratio based on halibut PSC use in 1995 through 1997 multiplied by ''the PSC limit of [halibut] available to catcher/processors in the year in which the harvest limit will be in effect.'' As noted in Table 6 of this preamble, the amount of halibut PSC that is ''available to catcher/processors'' decreases on an annual basis beginning in 2009 because a portion of the halibut PSC limit assigned to the Amendment 80 sector (i.e., catcher/processors) is decreased by 50 mt per year. This would result in a reduction of the AFA catcher/processor sideboard limit. It does not appear that the Council intended to reduce the AFA catcher/processor halibut PSC sideboard limit with this action, and fixing the AFA catcher/processor halibut PSC limit at the amount established in the 2006 and 2007 final harvest specifications would best meet the Council's apparent intent.

2. AFA Crab PSC Sideboard Limits in the BSAI

The Program would also modify AFA crab PSC sideboard limits in the BSAI. The Program would assign each crab PSC to the BSAI trawl limited access fisheries equal to the sum of the AFA catcher/processor and AFA catcher vessel sideboard limits. Currently, crab PSC sideboard limits for the AFA catcher/processors are set at a percentage of the overall trawl crab PSC limit (*e.g.*, a fixed percentage of the total Zone 1 *C. bairdi* trawl PSC limit is assigned as an AFA catcher/processor sideboard limit for that crab PSC). This amount is calculated annually by multiplying the AFA catcher/processor sideboard ratio for a crab PSC species which is described in regulation in § 679.64, by the trawl crab PSC limit ''available to catcher/processors.'' Currently, the amount of trawl crab PSC available to catcher/processors is based on the total crab PSC limit, prior to any allocations to the CDQ Program.

The Program would clarify that the amount of crab PSC ''available to catcher/processors'' is the amount of the trawl PSC limit available after allocation to the CDQ Program as crab PSQ. This change in calculation would slightly reduce the amount of the trawl crab PSC limit that is available to AFA catcher/processors. This clarification would be consistent with the overall intent of the Program to assign AFA sideboard limits, other than halibut PSC, after allocation to the CDQ Program. As described in the draft EA/RIR/IRFA, this change in the method for calculating the AFA catcher/processor crab PSC sideboard limit is not likely to be more constraining on the fleet than the current method for calculating the sideboard limit. Crab PSC has not historically been a limiting factor for AFA trawl catcher/processors.

Unlike the AFA catcher/processor crab PSC sideboard limits, the AFA catcher vessel crab PSC sideboard limits are calculated at the level of specified target fishery categories, with separate crab PSC sideboard amounts for each target fishery (e.g., a specific amount of the trawl red king crab PSC limit is assigned as an AFA catcher vessel red king crab PSC sideboard limit for use in the yellowfin sole fishery). For AFA catcher vessels, the ratio of a crab PSC species assigned as a sideboard limit is based on the proportion of groundfish harvested by AFA catcher vessels in a specific target fishery category. Annually, an AFA catcher vessel crab PSC sideboard amount is determined by multiplying the sideboard ratio for a target fishery category, which is calculated based on criteria specified in

regulation at § 679.64, by the crab PSC limit apportioned to the target fishery category through the annual harvest specification process. The current method of calculating the crab PSC AFA catcher vessel sideboard becomes problematic with the changes proposed under the Program.

The current sideboard calculation method is dependent on the distribution of trawl crab PSC among the target fishery categories, and the AFA catcher vessel sideboard limit cannot be calculated until those amounts are determined in the annual harvest specification process (i.e., the sideboard calculation requires the output of the annual specification process). The annual harvest specification process, however, requires the amount of available limited access trawl PSC as an input, prior to determining that distribution. For the harvest specification process to function effectively, the amount of available crab PSC must be known, as that process distributes crab PSC among fisheries based on their crab PSC demands. Because the AFA catcher vessel sideboard limit calculation requires the output of the harvest specification process, and the harvest specification process requires the output of the sideboard calculation, an alternative approach is needed.

The Program would determine the AFA catcher vessel crab PSC sideboard limit in a manner similar to that used to initially compute the AFA catcher/processor crab PSC sideboard ratio. The proportion of the total trawl crab PSC limit attributed to AFA catcher vessels would be calculated as the sum of the AFA catcher vessel PSC sideboard limits for each crab PSC species in all target fisheries divided by the sum of the total trawl PSC limit for that crab PSC species as described in the annual harvest specification process in each year. The draft EA/RIR/IRFA prepared for this proposed action summarizes the average percentage of the total trawl crab PSC limit that was available to AFA catcher vessels for each crab PSC species. The specific years used to calculate the average amount of the trawl crab PSC limit assigned to AFA catcher vessels are described in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**).

The draft EA/RIR/IRFA notes that the average amount of the trawl red king crab AFA sideboard limit in all target fisheries from 2000 through 2002 was used as the basis for determining the total AFA red king crab sideboard limit. These years are the same years used to determine the amount of the trawl red king crab PSC limit assigned to the Amendment 80 sector. Presumably, the Council intended to apply the same baseline years for computing AFA sideboard limits as were used to assign Amendment 80 sector red king crab allocations. Similarly, NMFS assumes that the same years (1995 through 2002) used to assign *C. opilio* crab to the Amendment 80 sector would be used to assign an AFA catcher vessel sideboard limit. However, a trawl specific *C. opilio* PSC limit was not established prior to 1999. Therefore, NMFS would apply the sum of the average *C. opilio* trawl PSC limit that would have been assigned to AFA catcher vessels from 1999 through 2002 as the AFA catcher vessel sideboard limit. NMFS assumes that the same years (1995 through 2002) used to assign Zone 1 and Zone 2 *C. bairdi* crab to the Amendment 80 sector would be used to assign an AFA catcher vessel sideboard limit. Therefore, NMFS would apply the sum of the average *C. bairdi* trawl PSC limit that would have been assigned to AFA catcher vessels from 1995 through 2002 as the AFA catcher vessel sideboard limit for Zone 1 and Zone 2 *C. bairdi*. The results of this change in the AFA crab PSC sideboard limit calculation are shown in Table 41 to part 679 in the proposed regulatory text. This method for assigning the AFA catcher vessel crab PSC sideboard limit would continue to constrain AFA catcher vessels to historic crab PSC use, but the method for computing that limit would be based on the overall trawl crab PSC limit historically used by AFA catcher vessels.

As with the AFA catcher/processors, the ratio of crab PSC assigned to AFA catcher vessels would be multiplied by the amount of crab PSC for use by trawl gear after deduction for allocation of crab PSQ to the CDQ Program, consistent with the approach used for AFA catcher/processors.

D. AFA Yellowfin Sole Sideboard Limit in the BSAI

The Program would relieve AFA sideboard limits for yellowfin sole when the yellowfin sole ITAC reaches or exceeds 125,000 mt. Existing yellowfin sole AFA sideboard harvest limits would constrain the ability of AFA vessels to catch yellowfin sole at higher ITAC levels. Because yellowfin sole would be allocated to the Amendment 80 sector for exclusive harvest, the need for AFA sideboard limits would be greatly reduced because AFA vessels would not be directly competing with the vast majority of harvesters active in the yellowfin sole fishery. A small proportion of the BSAI trawl limited access sector includes non-AFA trawl catcher vessels. However, this group of harvesters would not be expected to be adversely affected by relieving AFA yellowfin sole sideboard limits at high yellowfin sole ITAC levels because non-AFA trawl catcher vessels have not historically harvested yellowfin sole.

E. Reallocating Unused Pacific Cod Among the Trawl Sectors

As discussed in Section IV of this preamble, the Program would, if necessary, modify regulations implemented under Amendment 85 so that unused Pacific cod in the Amendment 80 sector would not be reallocated to either the AFA catcher/processor or trawl catcher vessel sectors, the equivalent of the proposed BSAI trawl limited access sector described under the Program.

Pending the approval and publication of a final rule implementing Amendment 85, the Program would not modify the mechanism for reassigning Pacific cod that is projected to be unharvested from either the AFA catcher/processor or the trawl catcher vessel sectors as those sectors are defined under Amendment 85. The proposed rule to Amendment 85 details a complex suite of measures to reallocate unharvested Pacific cod from the trawl catcher vessel and AFA catcher/processor sectors. The Program would not modify this procedure.

F. Calculation of the Crab PSC Limit in the Red King Crab Savings Subarea (RKCSS)

Current regulations at § 679.21(e)(3)(ii)(B) set a limit on the amount of red king crab that may be taken in a specific area of the southeast Bering Sea known as the RKCSS. The limit is determined during the annual harvest specification process, but may not exceed an amount equal to 35 percent of the red king crab PSC limit assigned to the rock sole, flathead sole, and ''other rockfish'' complex. NMFS would modify this provision to conform with the extensive changes proposed for crab PSC management in general under the Program. Under the Program, NMFS would no longer allocate red king crab PSC to the Amendment 80 sector on a fishery-specific basis. Therefore, it would not be possible to base the RKCSS limit on the amount of red king crab PSC assigned to the rocksole or flathead sole fisheries.

NMFS proposes to resolve this conflict by modifying the RKCSS regulations to set the limit of red king crab PSC that could be used in the RKCSS as a percentage of the historic overall trawl red king crab PSC limit. During the period from 1998 through

2006, the RKCSS red king crab PSC limit has been set at 35 percent of the rock sole, flathead sole, and ''other rockfish'' allocation. This limit has ranged from 26.2 percent to 23.3 percent of the total red king crab PSC limit assigned for trawl gear, and has averaged 24.2 percent during this time period. From 2002 through 2006, the RKCSS limit has consistently been set at an amount equivalent to 23.3 percent of the total trawl red king crab PSC limit for trawl gear.

Based on historic RKCSS limits, NMFS proposes to set the RKCSS maximum limit at 25 percent of the red king crab PSC limit. This limit is slightly greater than the average amount of trawl red king crab PSC assigned to the RKCSS limit in 1998 through 2004, but less than the limit in 1998, 2000, and 2001. The Council and NMFS could choose to set the RKCSS limit at any level lower than or equal to 25 percent of the red king crab PSC limit each year through the annual harvest specification process.

NMFS notes that the RKCSS limit would continue to apply to both the Amendment 80 sector and BSAI trawl limited access sector under the Program. Therefore, it is possible that fishing patterns by Amendment 80 vessels and other trawl vessels in the RKCSS could cause the limit to be reached and the RKCSS to be closed to all trawl vessels.

G. Effects on Non-AFA Trawl Catcher Vessels

The Program would substantially reduce potential competition between AFA participants and the Amendment 80 sector through the allocations provided. Any modifications of AFA sideboard limits would not be expected to affect the Amendment 80 sector. Similarly, although the Program substantially modifies the AFA sideboard limits, it would not be expected to have an adverse effect on current participation patterns by non-AFA catcher vessels that are also participants in the BSAI trawl limited access sector.

Historically, non-AFA trawl catcher vessels have not substantially participated in the harvest of Amendment 80 species other than Pacific cod. Changes in AFA sideboard limits, for all species except Pacific cod, would not be expected to adversely affect the non-AFA trawl catcher vessel fleet due to their already limited participation in these fisheries as described in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

The allocation of Pacific cod among trawl fishery participants was addressed during the development of Amendment 85 to the FMP and is detailed in the analyses prepared for that action (see the NMFS Web site at *http://www.fakr.noaa.gov* for additional detail on Amendment 85). During the development of Amendment 85, the Council considered allocation measures for the non-AFA trawl catcher vessel sector and recommended an allocation mechanism that would combine AFA and non-AFA catcher vessel allocations. This proposed action would not modify AFA sideboard limits for Pacific cod. Nothing proposed in the Program would modify the effects of Pacific cod allocations and competition among AFA and non-AFA vessels in a manner not previously considered during the development of Amendment 85.

H. Processing and Receiving Catch

The Council clearly recommended that persons who are not participants in the Amendment 80 sector be prohibited from catching Amendment 80 species assigned to the Amendment 80 sector. It is also clear that the Council intended to prohibit Amendment 80 vessels from catching Amendment 80 species assigned to the BSAI trawl limited access sector.

The Council noted that Amendment 80 vessel owners and operators, specifically Amendment 80 vessel owners and operators participating in Amendment 80 cooperatives, could consolidate fishing operations, receive CQ from other cooperatives, and otherwise benefit from the exclusive harvesting privileges this proposed LAPP provides. Because Amendment 80 vessels could also process catch onboard, the allocation of a portion of the ITAC to the Amendment 80 sector would effectively provide exclusive processing opportunities for that amount of the ITAC to Amendment 80 vessels. Conceivably, Amendment 80 vessels in cooperatives could consolidate processing activities. It is not clear that the Council considered or intended that Amendment 80 vessels should serve as processing platforms for multiple cooperatives, harvesters in the Amendment 80 limited access fishery, and the BSAI trawl limited access sector. Processing restrictions for other cooperatives and the Amendment 80 limited access fishery are discussed in Sections VII and VIII of this preamble.

Therefore, the proposed rule would prohibit any Amendment 80 vessel from catching, receiving, or processing fish assigned to the BSAI trawl limited access sector. NMFS has determined that this prohibition would best meet the Council's recommendation to provide an allocation of ITAC to the Amendment 80 sector, but not encourage the consolidation of fishing or processing operations in the BSAI trawl limited access sector. Additionally, allowing Amendment 80 vessels to receive or process fish caught by vessels in the BSAI trawl limited access sector could allow Amendment 80 vessels to serve as motherships (i.e., a processing platform that is not fixed to a single geographic location), or stationary floating processors, for the BSAI trawl limited access sector fleet. This could increase the potential that catch formerly delivered and processed onshore, or at specific facilities onshore, could be delivered and processed offshore. This change in processing operations could have economic effects. The Council did not specifically address these issues at the time of final Council action.

Additionally, combining Amendment 80 and BSAI trawl limited access sector catch could increase the potential recordkeeping and reporting, and M&E complexities, that may arise from tracking catch derived from the Amendment 80 and BSAI trawl limited access sectors onboard one vessel. In particular, monitoring compliance with the GRS may prove problematic if catch is combined onboard a single vessel. NMFS does have some experience tracking catch delivered to a vessel from multiple vessels that are assigned to multiple cooperatives in the AFA. However, in most cases, the vessels receiving catch are not actively engaged in fishing operations at the same time and serve exclusively as a processing platform. Additionally, tracking pollock catch in the AFA and properly assigning it to a specific cooperative, is less difficult than tracking multiple species, halibut PSC, and crab PSC as would be required in the Program. If NMFS were to permit the delivery of catch from the BSAI trawl limited access sector to an Amendment 80 vessel, NMFS would likely have to limit the Amendment 80 vessel so that it could only operate as either a mothership or stationary floating processor or as a fishing vessel on a week-by-week basis consistent with the weekly production report (WPR) reporting period. Additional changes in M&E requirements and recordkeeping and reporting for Amendment 80 vessels receiving catch may also be necessary. NMFS welcomes comment on this proposed prohibition from persons involved in existing and planned harvesting and processing operations for Amendment 80 species in the BSAI.

VI. Amendment 80 QS

NMFS proposes to use the term quota share (QS) to describe the multi-year

privilege that would enable a person to receive exclusive harvest privileges under the Program. QS assigned to a person would confer an opportunity for a person to receive an exclusive harvest privilege if certain conditions are met. QS would provide a harvest privilege, not a right, to its holder. NMFS would allocate QS for each of the Amendment 80 species to a person who is eligible to participate in the Amendment 80 sector as defined in the CRP (see Section II of this preamble for more detail) and who applies to receive Amendment 80 QS in a timely fashion. NMFS would base the amount of QS issued to a person on the amount of legal catch made by an Amendment 80 vessel according to the official record developed by NMFS.

A. Eligibility To Receive Amendment 80 QS

As noted in the discussion of the CRP, participation in the Amendment 80 sector is limited to persons who meet the qualifications under that statute. However, the CRP did not specifically define the criteria that may be used to allocate Amendment 80 QS among eligible participants in the Amendment 80 sector. The Program contains provisions that would allocate Amendment 80 QS in consideration of historic and recent harvest patterns, and would accommodate specific conditions that could adversely affect the ability of an Amendment 80 vessel from being used to harvest fish in the Amendment 80 sector.

B. Method for Allocating Amendment 80 QS—General Provisions

The Council considered a range of alternative methods for allocating QS to participants in the Amendment 80 sector in the development of the Program. These alternatives are addresses in the draft EA/RIR/IRFA developed to support this proposed action (see **ADDRESSES**). The Program would balance allocation among recent and historic participants. As with other QS programs (e.g., BSAI Crab Rationalization, and IFQ halibut and sablefish), the Program would allocate QS based on historic and recent harvests rather than allocating QS to Amendment 80 sector participants based on alternative methods such as allocating equal shares or auctioning off QS. In other North Pacific LAPPs, the Council has recommended, and NMFS has allocated, QS based on landings that occurred during a specific time period as a means of equitably distributing QS to participants based on their relative dependance on the fishery.

1. Species Allocated QS Under the Program (Amendment 80 Species)

The six non-pollock groundfish species that would be subject to an allocation of Amendment 80 QS under the Program are: AI POP, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. The Program would allocate Amendment 80 QS only for these non-pollock groundfish species, which have historically been fully used and for which quota-based management is likely to result in reductions in the ''race for fish.''

Historic catch of non-Amendment 80 species would not result in Amendment 80 QS allocated to the Amendment 80 sector. The draft EA/RIR/IRFA prepared for this action details harvest rates and amounts for all of the non-pollock species (see **ADDRESSES**).

Several groundfish species (*e.g.,* Alaska plaice, arrowtooth flounder, and Greenland turbot) are not fully harvested because markets for these species are nascent and economically viable product forms have not been developed. The Council did not recommend allocating these species under the Program while these markets and products are developed by the trawl and non-trawl fisheries. Other species (*e.g.,* squid) have not been historically harvested by Amendment 80 vessels and the Council did not recommend allocating these species to the Amendment 80 sector because there is no clear historic or current fishing dependance on these species. Furthermore, it was not clear that allocation of these species to the Program would result in any clear conservation or management benefit; yet could adversely affect harvest patterns by other fishery participants (*e.g.,* AFA catcher vessels) that are more likely to harvest these species.

Other species (*e.g.,* Aleutian Islands northern rockfish) are not open to directed fishing and are currently harvested incidental to other target species. Allocating those species based on historic catch would include incidental harvests, and in some cases a large percentage of those incidentally harvested fish were discarded. Allocating species such as Aleutian Islands northern rockfish could advantage harvesters who have high bycatch rates relative to harvesters using more selective methods to target catch. Allocating such species to Amendment 80 participants would reward harvesters with high incidental catch, and possibly high discard rates, and frustrate the intent of the Program to encourage lower bycatch and discard rates. The Council did note that if subsequent review indicates that other groundfish species could be more conservatively managed through the LAPP management, those species could be added to the Program through a separate FMP amendment and rulemaking process.

2. Pacific Cod as an Amendment 80 Species

As noted in Section IV of this preamble, Pacific cod would be considered an Amendment 80 species for purposes of Amendment 80 QS allocation. The Program would allocate Pacific cod QS using the same years for determining qualifying harvests as applicable to the other Amendment 80 species (*i.e.,* the highest tonnage of harvests during the five of seven years from 1998 through 2004). The draft EA/RIR/IRFA developed for the Program analyzed the effects of allocating Pacific cod to the Amendment 80 sector as QS (see **ADDRESSES**). As noted earlier, Pacific cod would be subject to the same restrictions applicable to other Amendment 80 species (*e.g.,* cooperatives would be issued TAC, rollover of unused BSAI trawl limited access sector ITAC could be rolled over to Amendment 80 cooperatives).

3. Years of Fishing Activity That Yield QS: 1998 Through 2004

The Program would implement an allocation of QS based on catch for each Amendment 80 species using an Amendment 80 vessel during the period from 1998 through 2004. After reviewing various catch patterns within the fishery, the Council selected this time period to accommodate historically and recently active fishery participants. The Council concluded that catch patterns during this seven-year period were considered to represent a reasonable range of catch and participation patterns in the fishery, and catch by Amendment 80 vessels before 1998 was not representative of the current catch patterns and its inclusion would unduly limit the allocation of QS to more recent participants. Harvest patterns from 1998 until 2004, the most recent available harvest data at the time of final Council action in June 2006, were selected to accommodate recent participants and harvest patterns. Furthermore, the range of harvest patterns reviewed by the Council and used as the basis for allocation of QS included the recommendations made by Amendment 80 participants during the development of the Program.

The Council also recommended allocating QS based on a subset of catch from the seven years from 1998 through

2004. On occasion, a vessel or operator may have been unable to fish due to unforeseen circumstances (*e.g.,* mechanical problems with the vessel, or medical emergencies that affected crew and limited catch), or had poor catch due to the conditions in the fishery for that year (*e.g.,* lower TAC, unusual distribution of catch affecting harvest patterns, closure of the fishery before a vessel could maximize its harvest). The Council recommended accommodating these issues by having NMFS select the best five of seven years of catch, by tonnage, for each Amendment 80 species landed by an Amendment 80 vessel as the basis for allocating Amendment 80 QS. The net effect of this provision is that some years of poor catch would not be included in the calculation for allocating Amendment 80 QS. This provision would moderate the affect of poor harvests in some years and would weight the average catch by an Amendment 80 vessel to favor years with better overall catch. Generally, QS for a given Amendment 80 species would be allocated based on the percentage of the sum of the best five of seven years of harvest from a specific Amendment 80 vessel compared with the sum of the best five of seven years of harvest of that species by all Amendment 80 vessels.

4. Legal Landings that Result in QS

The Program would base the allocation of QS on ''legal landings.'' The Program would define a legal landing as all catch made by an Amendment 80 vessel during the qualifying years (1998 through 2004), and reported in compliance with State and Federal regulations in effect at the time of landing. A legal landing would include only the catch of groundfish from the BSAI that is recorded on a NMFS weekly production report (WPR) during the qualifying years. Catch that was not legally reported or caught would not be considered a legal landing.

Additionally, Amendment 80 species caught under an experimental fishing permit, scientific research permit, or while participating in the CDQ Program would not be considered for allocation of Amendment 80 QS. Fishing opportunities under these permits or the CDQ Program were not available to all participants during the qualifying years and would provide undue advantage to a subset of fishery participants. Excluding catch under these conditions would be consistent with the approach used in other LAPPs (e.g., BSAI Crab Rationalization Program and Central GOA Rockfish Program).

The Program would use WPRs as the basis to assign legal landings because they represent the most complete record of catch by a vessel. Although alternative methods could be used to assign catch to a vessel, such as using data blended from WPRs and observer reports, observer coverage on vessels varied widely. Under such an approach, an Amendment 80 vessel could be assigned a catch rate that could differ substantially from that vessel's WPR records. The most complete source of vessel-specific catch during the qualifying period. comes from WPR records because all vessels are required to submit WPRs.

Unlike other LAPPs that exclude discarded catch as a legal landing, the Council recommended that the Program consider ''total catch'' as the basis for allocating QS for a variety of reasons. Total catch includes fish that are caught and retained, as well as fish that are caught and then discarded. The Program would not exclude catch incidentally caught in other fisheries or by a specific gear types. All legally reported catch on a WPR would be included for purposes of QS allocation. As an example, all of the Amendment 80 vessel operators recorded catch on WPRs using non-pelagic trawl gear. Several Amendment 80 vessels also recorded catch on their WPRs using pelagic trawl gear and hook-and-line gear. Although these catches represent a small proportion of the total catch, that catch would be considered an Amendment 80 legal landing and would be included for purposes of allocating Amendment 80 QS.

A review of total catch versus retained catch data indicated that smaller Amendment 80 vessels (e.g., vessels under 200 ft (61 m) LOA) tended to discard a greater proportion of their catch relative to larger vessels. Most likely, this is due to reduced storage capacity on smaller vessels, particularly for species that were incidentally caught while directed fishing for different Amendment 80 target species (e.g., flathead sole may have been discarded while vessels targeted yellowfin sole). On average, smaller vessels would have a smaller proportion of the total retained landings, and therefore would be issued a smaller percentage of the total QS allocation, if retained catch were used instead of total catch to calculate the distribution of QS.

NMFS would assign legal landings to the Amendment 80 vessel on which those landings were made and not to any other Amendment 80 vessel. Furthermore, NMFS would not consider Amendment 80 legal landings to be directly or indirectly transferrable from one Amendment 80 vessel to another Amendment 80 vessel. As an example, private contractual arrangements to assign legal landings from one Amendment 80 vessel to a specific groundfish vessel moratorium permit (for legal landings prior to 2000), or to a specific LLP license (for legal landings in 2000 through 2004), or any other contract or other legal instrument that might address assigning legal landings from an Amendment 80 vessel to another Amendment 80 vessel would not be considered by NMFS for the purposes of allocating QS. This restriction would (1) Insure that claims for specific legal landings are not in dispute among Amendment 80 vessel owners; (2) reduce the potential for complicated and lengthy appeals; and (3) be consistent with the clear intent of the Program to assign legal landings to specific Amendment 80 vessels based on the catch physically made by an Amendment 80 vessel.

5. Amendment 80 Official Record

As with other LAPPs developed by the Council, such as the BSAI Crab Rationalization Program, NMFS would establish an Amendment 80 official record containing all necessary information concerning Amendment 80 legal landings made by all Amendment 80 vessels during the seven-year qualifying period, Amendment 80 vessel ownership, Amendment 80 LLP license holdings, and any other information needed for assigning QS. NMFS would produce the official record from data including NMFS WPRs, LLP licenses assigned to the Amendment 80 sector, and other relevant information. NMFS would presume the official record is correct and an applicant wishing to amend the official record would have the burden of establishing otherwise through an evidentiary and appeals process. That process is described in Part D of this section below.

The official record would also be used to establish the initial pool of QS that would be distributed to participants in the Amendment 80 sector. There are several methods that have been used in other LAPPs to establish an initial QS pool: Fixing the initial QS pool amounts based on past harvest patterns (e.g., BSAI Crab Rationalization Program), or using a baseline year of harvests and converting those harvests to quota share units (e.g., Central GOA Rockfish Program). Administratively, the simplest and clearest method for establishing the initial QS pool for a given Amendment 80 species is to set the initial QS pool at an amount equal to the sum of the highest five of seven years of legal landings, in metric tons (mt), for all Amendment 80 vessels. This method is similar to that used for

establishing the QS pool in the halibut and sablefish IFQ program.

Each metric ton of legal landing credited to an Amendment 80 vessel would result in one QS unit, with specific modifications for yellowfin sole, flathead sole, and rock sole, as discussed in Part I of this section below. This initial QS pool would be adjusted should the official record be amended through successful claims brought by Amendment 80 sector participants or other corrections to the underlying data. See Part D of this section below for more detail. As with other LAPPs (e.g., Central GOA Rockfish Program), NMFS would establish use caps using this initial QS pool. Use caps are described further under Section IX of this preamble.

C. Application for Amendment 80 QS

A person would be required to submit an application for Amendment 80 QS in order to receive Amendment 80 QS initially. NMFS would require an application to ensure that QS is assigned to the appropriate persons, and to provide a process for resolving claims for legal landings that are contrary to the official record. Once a person submits an application for QS that is approved by NMFS, that person would not need to resubmit an application for QS in future years.

Unlike other LAPPs (e.g., Central GOA Rockfish Program) that provided only a single application period to receive QS after which no additional applications would be accepted by NMFS, NMFS would accept applications for Amendment 80 QS on an annual basis. This change is necessary to accommodate the specific statutory language in the CRP that does not grant NMFS the authority to permanently deny eligibility to participate in the Program for failure to meet an application deadline. NMFS would require that all applications for Amendment 80 QS be received not later than 5 p.m., Alaska local time, on October 15 or postmarked by that date if the application is mailed, to receive QS for use in the following calendar year. Although a person could apply to receive Amendment 80 QS by October 15 of the following year if they missed the application deadline for the previous year(s), once NMFS approves an application for QS, it would not need to be resubmitted annually.

NMFS would mail an application package to all potentially eligible Amendment 80 vessel owners and Amendment 80 LLP holders based on the address on record at the time the application period opens. NMFS would facilitate the application process by making the application form available on the NMFS, Alaska Region Web site at *http://www.fakr.noaa.gov.* Interested persons also could contact NMFS to request an application package. An application could be submitted by mail, fax, or hand delivery. The proposed regulatory text at § 679.90(b) provides addresses and delivery locations.

The proposed regulatory text at § 679.90(b) details the information required in an application. Briefly, the application would contain the following elements:

- Identification and contact information for the applicant;
- Information on the Amendment 80 vessel(s) owned by the applicant;
- Amendment 80 LLP licenses held by the applicant;
- If applicable, clear and unambiguous documentation that an Amendment 80 vessel that has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish in U.S. waters;
- If applicable, a copy of a written contract held by the applicant that clearly and unambiguously provides that the owner of the Amendment 80 vessel has transferred all eligibility to participate in the Program based on the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel;
- Any other information deemed necessary by NMFS for assigning QS; and
- The applicant's signature and certification. If the application is completed on behalf of the potential QS recipient, authorization for that person to act on behalf of that person.

D. Reviewing and Appealing a QS Application

NMFS would evaluate applications submitted during the specified application period and compare all claims in an application with the information in the official record. NMFS would accept claims in an application it determines to be consistent with information in the official record. NMFS would not accept inconsistent claims in the applications, unless verified by documentation. An applicant who submits inconsistent claims, or an applicant who fails to submit information supporting his or her claims with their application, would be provided a single 30-day evidentiary period to submit the supporting information, evidence to verify his or her inconsistent claims, or a revised application with claims consistent with information in the official record. An applicant who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct.

NMFS would evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the applicant's inconsistent claims in his or her application were indeed correct, NMFS would amend the official record with that information or evidence. NMFS would use the amended official record to determine the applicant's eligibility. However, if after the 30-day evidentiary period, NMFS were to determine that the additional information or evidence did not prove that the applicant's inconsistent claims in his or her application were correct, NMFS would deny the appeal. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to change the official record through an initial administrative determination (IAD).

NMFS' IAD would indicate the deficiencies and discrepancies in the application, or revised application, including any deficiencies in the information or the evidence submitted in support of the information. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive any QS based on contested landing data unless and until the appeal was resolved in the applicant's favor. Once NMFS has approved an application for Amendment 80 QS in its entirety, an Amendment 80 QS permit with a specified amount of Amendment 80 QS units derived from the amount of legal landings of each Amendment 80 species attributable to a specific Amendment 80 vessel would be assigned to the applicant.

E. Assigning an Amendment 80 QS Permit to an Amendment 80 Vessel Owner

After reviewing applications for Amendment 80 QS, comparing those applications to the official record, and resolving inconsistencies in claims for legal landings, NMFS would issue an Amendment 80 QS permit that lists the total amount of QS units issued for each Amendment 80 species for each applicant. The legal landings from an

Amendment 80 vessel would give rise to only one Amendment 80 QS permit.

Given existing information, NMFS anticipates issuing 28 Amendment 80 QS permits based on the legal landings of the 28 Amendment 80 vessels that have been identified in NMFS's WPR database. If additional vessels not listed under Table 1 of this preamble are determined to be eligible for the Program, additional Amendment 80 QS permits could be issued to persons based on legal landings from those vessels. Once an Amendment 80 QS permit is issued, the QS units assigned to that QS permit would remain with that QS permit and could not be severed or otherwise be transferred independently from the rest of the QS permit. The Amendment 80 QS permit would be issued to the person identified in an approved application for QS. In most cases, the person receiving the QS would be the Amendment 80 vessel owner.

F. Assigning an Amendment 80 QS Permit to an Amendment 80 LLP License for Lost or Ineligible Vessels

The Program would ensure that an Amendment 80 QS permit resulting from the legal landings of an Amendment 80 vessel could be used even if an Amendment 80 vessel were lost or became permanently ineligible to fish in U.S. waters. Under certain conditions, NMFS would issue an Amendment 80 QS permit to the holder of the Amendment 80 LLP license originally assigned to an Amendment 80 vessel rather than the Amendment 80 vessel owner. The list of Amendment 80 LLP licenses originally assigned to an Amendment 80 vessel is provided in the proposed Table 31 to part 679. An Amendment 80 QS permit would be issued to the Amendment 80 LLP license holder either (1) During the initial allocation of QS; or (2) after the initial issuance of QS as described under the Part G of this section below.

This provision is intended to allow a person to continue participation in the Amendment 80 sector if otherwise qualified. During the development of the Program, this provision was considered as a means for meeting the overall intent of the Program to allow a person to use QS under specific conditions without contravening the intent of the CRP. As an example, the F/V ARCTIC ROSE has sunk, and the F/V BERING ENTERPRISE cannot be documented as a U.S. fishing vessel and that vessel is not eligible for a fishery endorsement under fishing vessel documentation regulations at 46 U.S.C. 12108.

The provision to assign a QS permit to an Amendment 80 LLP license would apply only if an Amendment 80 vessel suffered an actual total loss, constructive total loss, or became permanently ineligible to fish in the BSAI. The terms ''actual total loss'' and ''constructive total loss'' are commonly used in the business of insuring marine vessels. For additional clarity, NMFS is considering defining these terms in a separate rulemaking action that is anticipated to be effective before the Program. NMFS does not propose defining those terms in the regulatory text for the Program. Permanent ineligibility to fish in U.S. waters would apply only if an Amendment 80 vessel's USCG documentation has a permanent restriction prohibiting that vessel from holding a fishery endorsement under 46 U.S.C. 12108.

Temporary conditions that limit the ability of an Amendment 80 vessel to fish would not constitute permanent ineligibility. As an example, an Amendment 80 vessel that is not designated on an LLP license, fails to maintain adequate observer coverage, is undergoing repair, fishes in another fishery outside the BSAI, or any similar temporary condition, would not be considered to be permanently ineligible to fish. All of the examples provided above are temporary and could be resolved. The Amendment 80 vessel could be designated on an LLP license, maintain adequate coverage, complete repair, transit to the BSAI and begin fishing, or otherwise address the temporary condition. NMFS welcomes comment on the proposed interpretation of this specific provision.

NMFS would require that the following conditions be met to assign an Amendment 80 QS permit to an Amendment 80 LLP license:

a. The Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish and that fact can be verified by NMFS;

b. The owner of the Amendment 80 vessel that has been lost or is permanently ineligible has transferred the rights to receive QS to the holder of the Amendment 80 LLP license originally assigned to that Amendment 80 vessel through a clear and unambiguous written contract, and a copy of that contract is provided to NMFS; and

c. The holder of the Amendment 80 LLP license originally assigned to that Amendment 80 vessel applies to receive the QS in a timely fashion and provides the necessary information.

Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, it is permanently affixed to that LLP license. NMFS proposes to term this modified Amendment 80 LLP license with an affixed Amendment 80 QS permit an ''Amendment 80 LLP/QS license.''

G. Transferring QS

1. Limits on Transferring QS Permits

Once issued, a QS permit assigned to a specific Amendment 80 vessel or to an Amendment 80 LLP license originally assigned to an Amendment 80 vessel could only be transferred in its entirety. The Program would not allow an Amendment 80 QS permit to be subdivided once allocated.

Rather than allowing an Amendment 80 QS permit to be subdivided, participants could form Amendment 80 cooperatives and transfer the annual CQ among the cooperatives (see Section VII of this preamble). Subdivision of QS permits would subvert the clear intent of the Program to maintain a fixed number of Amendment 80 QS permits and to encourage QS holders to form cooperative harvest arrangements to meet specific harvesting goals.

2. Methods for Transferring QS Permits

NMFS would approve all transfers of QS permits to properly track ownership and use cap accounting. Once issued, QS could be transferred in one of three ways:

a. An Amendment 80 vessel owner assigned a QS permit could transfer (i.e., sell) the Amendment 80 vessel and the QS permit assigned to that Amendment 80 vessel to another person eligible to own a U.S. fishing vessel (i.e., document that Amendment 80 vessel under MARAD regulations);

b. Upon the actual total loss, constructive total loss, or permanent ineligibility of an Amendment 80 vessel that is assigned a QS permit, the Amendment 80 vessel owner could transfer the QS permit to the Amendment 80 LLP license originally issued for that Amendment 80 vessel (see Table 31 to part 679 in the proposed regulatory text for a list of those LLP licences); or

c. An Amendment 80 LLP license with a QS permit assigned to it could be transferred to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7).

3. Assigning an Amendment 80 QS Permit to an Amendment 80 LLP License

During the development of the Program, the Council recommended that QS be permitted to be transferred to the

LLP license originally issued for that vessel, if a vessel were lost or permanently ineligible to fish. NMFS has interpreted this provision to allow a QS permit to be assigned to the permanent fully transferrable LLP license that was originally derived from the Amendment 80 vessel used to originally qualify for the LLP in 2000, with one exception.

All Amendment 80 vessels except the F/V ENTERPRISE had documented landings that resulted in an LLP license being issued in 2000 based on the fishing activities of those vessels. Using the terms in the LLP, all Amendment 80 vessels except the F/V ENTERPRISE were original qualifying vessels that gave rise to LLP licenses endorsed for trawl gear in the BSAI with a catcher/processor designation (see regulations at 50 CFR 679.4(k) for additional detail). The F/V ENTERPRISE did not give rise to an LLP license. Because the F/V ENTERPRISE did not give rise to an LLP license, if NMFS were to permit a QS permit to be transferred only to the LLP license originally issued to an Amendment 80 vessel, the QS permit issued to the owner of the F/V ENTERPRISE could not be assigned to any LLP license. If the F/V ENTERPRISE was lost or became permanently ineligible to fish in U.S. waters, the QS issued to the owner of the F/V ENTERPRISE could be extinguished.

To address this apparently unique situation, NMFS would propose defining the LLP license to which the QS permit issued to the owner of the F/V ENTERPRISE could be transferred in the event that vessel is lost or becomes permanently ineligible to fish. Since the implementation of the LLP in 2000, the F/V ENTERPRISE has apparently fished under the authority of one LLP license (LLP license number LLG 4831). Therefore, NMFS would permit the transfer of an Amendment 80 QS permit assigned to the owner of the F/V ENTERPRISE to LLG 4831 should the F/V ENTERPRISE suffer an actual total loss, constructive total loss, or otherwise become permanently ineligible to fish in U.S. waters. NMFS welcomes comment on this proposed requirement.

Table 31 to part 679 in the proposed regulatory text lists the LLP licenses originally assigned to each Amendment 80 vessel. An Amendment 80 QS permit assigned to an Amendment 80 vessel would only be assigned to these LLP licenses.

4. Application To Transfer Amendment 80 QS

In order to transfer an Amendment 80 QS permit, an Amendment 80 QS holder would have to submit to NMFS an application to transfer Amendment 80 QS. NMFS would require that the following information be submitted as part of a transfer application:

- Transferor identification;
- Type of transfer (i.e., transfer of QS permit and Amendment 80 vessel to another person, transfer of QS to an Amendment 80 LLP license if a vessel has been lost);
- Information for transfers of Amendment 80 QS to another person. If transferring Amendment 80 QS permit assigned to an Amendment 80 vessel to another person, a USCG abstract of title or certificate of documentation which clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit is assigned would need to be attached;
- Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license. If transferring Amendment 80 QS permit assigned to an Amendment 80 vessel to the Amendment 80 LLP license originally assigned to an Amendment 80 vessel, the applicant would need to provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel is no longer able to be used in the Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel;
- Certification of transferor. The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief;
- Transferee information; and
- Certification of transferee. The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief.

An application to transfer Amendment 80 QS could be submitted by mail, fax or hand delivered (see regulatory text at § 679.90(f) for detailed information). Transfer forms would also be posted on the NMFS Web site at *http://www.fakr.noaa.gov*.

H. Issuance of QS After the Fishing Year Begins

Any Amendment 80 QS permit, or any additional Amendment 80 QS units for an Amendment 80 species that is assigned to an Amendment 80 QS permit after NMFS has issued CQ or ITAC to the Amendment 80 limited access fishery for that calendar year would not result: (1) In any additional CQ being issued to an Amendment 80 cooperative if that person has assigned his Amendment 80 QS to an Amendment 80 cooperative for that calendar year; or (2) ITAC being issued to the Amendment 80 limited access fishery if that person has assigned his Amendment 80 QS to the Amendment 80 limited access fishery for that calendar year.

This requirement would ensure that if an appeal, operation of law, or other fact amends an Amendment 80 QS permit after NMFS has issued CQ or ITAC for the calendar year, NMFS would not be required to remove a portion of the CQ or ITAC issued to other participants in the fishery during the fishing year, to accommodate a change in one person's QS holdings. Any such adjustment could adversely affect all other Amendment 80 sector participants. The following year, the person with the amended Amendment 80 QS permit could assign that permit to an Amendment 80 fishery that would result in either CQ if that QS was assigned to a cooperative, or ITAC if assigned to the Amendment 80 limited access fishery.

I. Method for Allocating QS—Specific Provisions

The Council recommended that the Program consider unique conditions that may exist in each Amendment 80 species fishery or that may apply to specific Amendment 80 vessels in the allocation of QS. In particular, the Program would establish specific mechanisms to (1) Allocate Amendment 80 QS to Amendment 80 vessels that do not have Amendment 80 legal landings during the 1998 through 2004 period; (2) assign legal landings and allocate QS for Amendment 80 species, other than Atka mackerel; and (3) allocate Atka mackerel QS to accommodate the harvest patterns of smaller Amendment 80 vessels.

1. Allocating QS to Amendment 80 Vessels With No Legal Landings

The CRP defines the Amendment 80 vessels eligible participate in the Amendment 80 sector on three criteria, one of which relates to the catch of BSAI non-pollock groundfish between 1997 and 2002. However, the Council recommended using catch during 1998 through 2004 as the qualifying years that would be used to allocate QS. As a result, NMFS has preliminarily identified three Amendment 80 vessels, the F/V BERING ENTERPRISE, F/V HARVESTER ENTERPRISE, and F/V PROSPERITY, that were not used to catch Amendment 80 species during 1998 through 2004. All three vessels are

eligible to participate in the Amendment 80 sector because the vessels were active in 1997 and harvested more than 150 mt of non-pollock groundfish. This circumstance creates the odd condition of these vessels being eligible to be used to fish in the Amendment 80 sector, but not eligible to generate any QS based on their historic catch patterns.

Rather than adjust the qualifying years for receiving QS, the Program would accommodate these Amendment 80 vessels by assigning a small percentage of the legal catch to them that would then result in QS. The amount selected would represent an amount that could still provide a limited economic benefit to the owners of the Amendment 80 vessels, but that would not unduly affect those fishery participants by reducing their QS allocations excessively. The Council selected the specific allocations based on recommendations provided by the affected industry during the development of the Program.

Each of these three Amendment 80 vessels would be assigned legal landings equivalent to 0.5 percent of the total yellowfin sole legal landings, 0.5 percent of the total rock sole legal landings, and 0.1 percent of the flathead sole legal landings. NMFS would make this allocation to the three Amendment 80 vessels by a proportional reduction to the total legal landings of yellowfin sole, rock sole, and flathead sole for the remaining 25 Amendment 80 vessels that have been identified thus far.

2. Assigning Legal Landings and Allocating QS for an Amendment 80 Species

For each Amendment 80 species, NMFS would assign legal landings to each Amendment 80 vessel based on the five of seven years of the greatest tonnage of legal landings for each Amendment 80 species from the official record to derive the ''Highest Five Years'' for that Amendment 80 species. This calculation would be based on all catch in all management areas. (the numerator in the following equation). If an Amendment 80 vessel was not used to make legal landings in at least five of the seven years, NMFS would include years with zero tons of legal landings, if necessary. NMFS would also calculate the five of seven years of the greatest tonnage of legal landings for all Amendment 80 vessels for that Amendment 80 species from the official record and sum that amount to derive the ''Σ All Highest Five Years'' for that Amendment 80 species (the denominator in the following equation). The result of this equation is the percentage of the total legal landings that would be assigned to a specific Amendment 80 vessel:

Highest Five Years for an Amendment 80 vessel/Σ All Highest Five Years for all Amendment 80 vessels x 100 = Percentage of the total legal landings for that Amendment 80 vessel.

To determine the amount of AI Pacific ocean perch and Pacific cod QS units derived from the legal landings made by an Amendment 80 vessel, NMFS would multiply the percentage of the total for an Amendment 80 vessel by the initial QS pool for that species. The amount of QS units derived from this calculation would be assigned to the Amendment 80 QS permit derived from that Amendment 80 vessel.

However, to determine the amount of yellowfin sole, rock sole, and flathead sole QS units derived from the legal landings made by an Amendment 80 vessel, NMFS would first need to accommodate the three Amendment 80 vessels that would be assigned a defined percentage of the legal landings assigned to an Amendment 80 vessel for these species. NMFS would need to adjust the percentage of the total yellowfin sole, rock sole, and flathead sole legal landings for all Amendment 80 vessels that made legal landings from 1998 through 2004. Each of the three vessels without legal landings in 1998 through 2004 would receive 0.5 percent of the yellowfin sole legal landings, 0.5 percent of the rock sole legal landings, 0.1 of the flathead sole legal landings. All other Amendment 80 vessels would have their yellowfin sole and rock sole legal landings reduced by 1.5 percent, and flathead sole legal landings reduced by 0.3 percent to accommodate those three vessels. Once the legal landings for rock sole, yellowfin sole, and flathead sole have been adjusted for an Amendment 80 vessel, NMFS would calculate the initial allocation of QS units for these species by multiplying the Adjusted percentage for an Amendment 80 vessel by the initial QS pool for that species. The amount of QS units derived from this calculation would be assigned to the Amendment 80 QS permit derived from that Amendment 80 vessel.

3. Assigning Atka Mackerel QS

Assigning Atka mackerel QS derived from the legal landings of an Amendment 80 vessel would require several additional steps. After the percentage of Atka mackerel legal landings derived from an Amendment 80 vessel has been determined using the process described above, the Program would accommodate specific harvesting conditions in the Atka mackerel fishery.

NMFS allocates Atka mackerel TAC to three distinct management areas, Area BS/541, Area 542, and Area 543, in consideration of stock abundance, distribution, and dynamics. Generally, most of the Atka mackerel TAC available for harvest is located in the Central Aleutian Islands (Area 542) and the Western Aleutian Islands (Area 543) management areas. During the qualifying years, these Atka mackerel fisheries were typically prosecuted by larger Amendment 80 vessels that specifically targeted Atka mackerel. These vessels are able to harvest and process large quantities of fish in these remote locations without frequent and expensive trips to port facilities.

A smaller proportion of the overall Atka mackerel TAC is available for harvest in the Bering Sea and Eastern Aleutian Islands management area (Area BS/541). During the qualifying years for the Program, a portion of the Atka mackerel TAC in Area BS/541 was harvested by relatively smaller Amendment 80 vessels. These smaller Amendment 80 vessels have not historically harvested Atka mackerel in Areas 542 or 543 due to the higher expenses associated with operating in more remote areas (e.g., increased fuel costs to travel to the Aleutian Islands). Many smaller vessels also targeted Bering Sea flatfish that were open during the same time as the Atka mackerel fishery during the qualifying years. In addition, smaller vessels are less well suited than larger vessels to operate in the adverse weather conditions typical in Areas 542 and 543.

If Atka mackerel QS was allocated such that the CQ or ITAC resulting from that QS was divided proportionally over all three management areas, some smaller Amendment 80 vessels would be assigned Atka mackerel CQ or ITAC that could only be harvested in areas in which they have not historically been active. To address this concern, the Council recommended that the Program allocate Atka mackerel QS to smaller vessels with limited catch of Atka mackerel in proportion to the amount of legal landings made by these smaller vessels in specific management areas.

After reviewing the available catch data in the draft EA/RIR/IRFA prepared for this action (see **ADDRESSES**), the Council noted that Atka mackerel catch patterns indicated that Amendment 80 vessels less than 200 ft (61 m) LOA and with less than 2 percent of the overall ''Atka mackerel history'' caught a substantially greater proportion of their Atka mackerel catch in Area BS/541 and Area 542. For purposes of this proposed

rule, NMFS would interpret the phrase ''Atka mackerel history'' used by the Council to mean an amount of catch of Atka mackerel that would generate less than 2 percent of the total Atka mackerel legal landings. This interpretation is consistent with the phrasing used in the Council's motion supporting this action.

The Council termed Amendment 80 vessels less than 200 ft (61 m) LOA and less than 2 percent of the Atka mackerel legal landings as ''non-mackerel vessels.'' The Council termed Amendment 80 vessels greater than 200 ft (61 m) LOA or with catch resulting in more than two percent of the Atka mackerel legal landings as ''mackerel vessels.'' For purposes of consistency and clarity for the affected industry, these phrases are used in this proposed rule.

To assign Atka mackerel QS, NMFS would first determine the number of Amendment 80 vessels with the size and percentage of Atka mackerel legal landings that would define them as non-mackerel vessels. NMFS would determine which Amendment 80 vessels are non-mackerel vessels based on the official record. If an Amendment 80 vessel is a non-mackerel vessel, NMFS would then determine the percentage of the legal landings from each Atka mackerel management area in each year from 1998 through 2004 for that non-mackerel vessel.

For example, if a non-mackerel vessel were assigned 1 percent of the Atka mackerel QS based on its best five of seven years of legal landings, and during the period from 1998 through 2004, a total of 70 percent of its legal landings (this includes all seven years of legal landings, not only the best five of seven years) were made in Area BS/541 and 30 percent of its legal landings were made in Area 542, then 70 percent of its QS, or 0.7 percent of the total Atka mackerel QS, would be assigned as Area BS/541 QS, and 30 percent of its QS, or 0.3 percent of the total Atka mackerel QS, would be assigned as Area 542 QS. The specific amount of Atka mackerel QS units assigned to each Atka mackerel area would be noted on the Amendment 80 QS permit derived from a non-mackerel vessel. The sum of all Atka mackerel QS units derived from the legal landings of all non-mackerel vessels in all management areas is the non-mackerel QS pool.

After NMFS assigns Atka mackerel QS to all non-mackerel vessels, NMFS would assign the remaining amount of the initial Atka mackerel QS pool to mackerel vessels. Atka mackerel QS derived from the legal landings of mackerel vessels would not be assigned by specific Atka mackerel management area. The sum of all Amendment 80 QS units derived from the legal landings of all mackerel vessels would be the mackerel QS pool. Additional detail on the non-mackerel and mackerel QS pool and the mechanism for allocating a portion of the annual Atka mackerel ITAC to non-mackerel and mackerel QS holders is detailed in Section VII of this preamble. A specific example describing allocation of mackerel and non-mackerel CQ and ITAC using the 2008 Atka mackerel TAC is provided in Section XI of this preamble.

4. The Initial QS pool

The initial QS pool for each Amendment 80 species would be set at an amount equivalent to the sum of All Highest Five Years based on the official record as of December 1, 2007. Because the initial QS pool could be modified by appeal, operation of law, or amendment at a future date, NMFS would set the initial pool at a fixed amount prior to the 2008 fishing year so that NMFS could determine specific QS allocations for the 2008 fishing year. This would permit NMFS to issue QS and issue CQ to Amendment 80 cooperatives and ITAC to the Amendment 80 limited access fishery. An example of establishing an initial QS pool for each Amendment 80 species is provided in Section XI of this preamble. The initial QS pool would also be used as the basis for establishing use caps. Use caps are discussed in greater detail in Section X of this preamble.

VII. Amendment 80 Cooperatives

Once an Amendment 80 QS permit is assigned to a person, it would authorize that QS holder to fish in the Amendment 80 sector. On an annual basis, a QS holder would either have to assign that QS to a harvesting cooperative formed with other eligible QS holders, or assign that QS permit to the Amendment 80 limited access fishery. The QS holder would make this annual selection through an application process. An Amendment 80 cooperative would receive an exclusive privilege to catch a specific amount of Amendment 80 species and crab and halibut PSC. The QS holders who are members of an Amendment 80 cooperative would decide how to catch and who among them could catch the exclusive catch privilege granted to the cooperative. An Amendment 80 cooperative would allow the members of that cooperative to coordinate their fishing operations, potentially reduce operational expenses, possibly increase the quality and revenue from the product, and realize other benefits that a LAPP may provide.

If an Amendment 80 QS permit is assigned to an Amendment 80 cooperative, the sum of the QS units of all of the members assigning QS permits to that cooperative would yield an exclusive annual catch limit of Amendment 80 species and crab and halibut PSC that could be harvested by the members of the Amendment 80 cooperative.

A. Requirements for Forming an Amendment 80 Cooperative

As with other cooperative-based LAPPs (*e.g.*, Central GOA Rockfish Program), specific requirements would have to be met before QS holders could form an Amendment 80 cooperative. These requirements would ensure that the cooperative is comprised of multiple, independently operating businesses; the Program does not result in a level of consolidation that would unduly affect employment opportunities of vessel, crew; and that NMFS would be able to properly account for any amount of CQ assigned and used by a cooperative.

During the development of the Program, the Council considered a range of alternative measures for forming a cooperative and allocating annual harvest privileges. A detailed discussion of the range of allocation and cooperative formation alternatives considered is contained in the draft EA/RIR/IRFA (see **ADDRESSES**) and is not reiterated here.

The following list details the primary requirements that would need to be met to form an Amendment 80 cooperative:

- The cooperative must meet general membership and organizational requirements;
- A minimum of at least three unique persons not affiliated with each other through direct or indirect ownership or control must assign their QS to an Amendment 80 cooperative;
- At least nine QS permits, either assigned to an Amendment 80 vessel or an Amendment 80 LLP license (*i.e.*, an Amendment 80 LLP/QS license) must be assigned to an Amendment 80 cooperative;
- A complete application to join a cooperative must be submitted by November 1 of the year prior to fishing in a cooperative; and
- Effective in 2009, a timely and complete EDR must be submitted by each cooperative member who wishes to assign QS to a cooperative, as discussed in Section XIII of this preamble.

1. Membership in an Amendment 80 Cooperative

Membership in an Amendment 80 cooperative would be voluntary. No

person may be required to join an Amendment 80 cooperative. Amendment 80 cooperatives would be required to allow an eligible person to join that cooperative upon receipt of written notification that a person is eligible and wants to join. All persons who join Amendment 80 cooperatives would be subject to the terms and agreements that apply to the members of the cooperative, as established in the contract governing the conduct of the Amendment 80 cooperative. All persons who wish to join a cooperative would be required to be listed on the annual application for CQ. NMFS proposes a November 1 deadline for the application for CQ so that NMFS could properly assign each person's QS permit and resulting CQ to the cooperative in time for the upcoming fishing year.

Members of an Amendment 80 cooperative would be permitted to leave during a calendar year, but any CQ contributed to the cooperative by that member would remain with that Amendment 80 cooperative for the remainder of the calendar year. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person would be permitted to join that Amendment 80 cooperative upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license. These provisions would ensure that a cooperative would not be adversely affected by the decisions of a member to end membership in the cooperative, or who is no longer able to maintain membership in the cooperative through the sale of vessels, death, or dissolution. Each cooperative may establish clauses in their cooperative contract that address these issues in specific detail.

2. Organizational Requirements

An Amendment 80 cooperative would have to meet the following requirements before it would be eligible to receive CQ:

a. Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia; and

b. Each Amendment 80 cooperative must appoint an individual as the designated representative. The designated representative would act on behalf of the Amendment 80 cooperative and serve as a contact for NMFS. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf.

3. Minimum Number of Persons Needed To Form a Cooperative

A minimum number of unique QS holders would be required to ensure that the Amendment 80 cooperatives are truly comprised of multiple entities and not simply one entity with multiple QS permits. To form a cooperative, the Program would require that it be comprised of at least three unique persons (e.g., individuals or corporations) who do not share a 10 percent or greater direct or indirect ownership or control interest. This standard is intended to ensure that the persons are truly distinct and not merely commonly held corporations. The 10 percent common ownership and control standard has been commonly used in North Pacific LAPPs as a reasonable means of defining distinct corporate entities and ownership (i.e, AFA, BSAI Crab Rationalization Program), and is commonly referred to as the ''AFA 10 percent threshold'' after the first LAPP to apply this standard. NMFS would require ownership and control information from each QS holder to be submitted as part of the annual application for CQ to ensure that this standard is met.

4. Minimum Number of QS Permits Needed To Form a Cooperative

As noted earlier, NMFS would issue only one QS permit based on the Amendment 80 legal landings from each Amendment 80 vessel. NMFS has initially identified a total of 28 Amendment 80 vessels with legal landings that would result in 28 unique Amendment 80 QS permits. The Council recommended that a minimum number of QS permits would be required to be assigned to a cooperative in order for it to be allowed to receive CQ. The Council recommended this requirement to ensure that cooperatives are comprised of a substantial number of the total number of the participants in the fishery. The Council wished to encourage economic efficiency in the Amendment 80 sector through cooperative harvesting arrangements, and to minimize the potential for small cooperatives to form, frustrating the goals of creating cooperation among participants in the Amendment 80 sector.

The Council recommended that at least 30 percent of the QS permits issued, which includes Amendment 80 LLP/QS licenses, must be assigned to a cooperative for it to form, be approved by NMFS, and be assigned CQ. Thirty percent of the 28 (i.e., the number of QS permits that NMFS has initially identified that may be issued) is 8.4. In order to ensure that at least 30 percent of the QS permits are assigned to the cooperative, at least nine QS permits would need to be assigned to the cooperative to meet the minimum requirements recommended by the Council. Because QS permits may not be subdivided, eight QS permits would represent only 28.57 percent of all of the QS permits. Nine QS permits represents 32.14 percent of all of the QS permits, and is greater than the 30 percent of the total QS permit requirement recommended by the Council. Therefore, at least nine QS permits would have to be assigned to an Amendment 80 cooperative for it be approved by NMFS to receive CQ.

B. Application for Cooperative Quota (CQ)

NMFS would require that QS holders wishing to form an Amendment 80 cooperative submit an annual application for CQ prior to the start of the fishing year to ensure that NMFS would know how much CQ would be assigned to cooperatives, how much of the Amendment 80 species ITAC would be assigned to the Amendment 80 limited access fishery, and which vessels would need to be tracked to properly account for all catch. As with other LAPPs (*e.g.,* BSAI Crab Rationalization Program, Central GOA Rockfish Program), this application would be used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded. (*See* Section IX of this preamble for additional detail on use caps).

The application for CQ would need to be received by NMFS not later 5 p.m., Alaska local time, on November 1 of the year prior to fishing under the CQ permit to be considered timely. The cooperative's designated representative would be responsible for submitting the application for CQ on behalf of all the members. If the designated representative for the cooperative were to fail to submit a timely application for CQ, the members of the cooperative would not be permitted to assign their QS permits, any associated Amendment 80 vessels, or any Amendment 80 LLP licenses, to another Amendment 80 cooperative or the Amendment 80 limited access fishery the following year. This requirement would encourage all participants in the Amendment 80 sector to complete an application, and avoid actions that could delay the issuance of CQ or the Amendment 80 limited access fishery ITAC. NMFS would have limited time to issue CQ

and establish the Amendment 80 limited access fishery ITAC and any delays could adversely affect other fishery participants.

The application for CQ could be submitted by mail, fax, or in person (*see* regulatory text at § 679.91(b) for more details). The information that would be required in the application is detailed in the proposed regulatory text at § 679.91(b). The following list summarizes the proposed information that would be required:

- Applicant's information;
- Amendment 80 Vessel identification;
- Amendment 80 LLP identification;
- Amendment 80 QS information (the Amendment 80 QS permit number(s) held by the members of the cooperative);
- Amendment 80 QS ownership documentation;
- Amendment 80 cooperative identification;
- Members of the Amendment 80 cooperative;
- Vessel identification, including the name(s) and USCG documentation number of vessel(s) on which the CQ issued to the Amendment 80 cooperative will be used;
- Certification that an EDR has been submitted by all cooperative members;
- Designated representative and cooperative members signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

Under the Program, if a person applies to fish for an Amendment 80 cooperative, NMFS would assign all Amendment 80 QS permits, Amendment 80 LLP licenses, and Amendment 80 vessels associated with the Amendment 80 QS permit held by that person to that Amendment 80 cooperative. Based on past experience, this ''all in'' requirement for assigning QS permits, LLP licenses, and vessels to a cooperative would encourage the cooperative behavior the Program is designed to achieve. This requirement would encourage the formation of cooperatives by reducing the incentives for persons with multiple QS permits from applying some QS permits and vessels to one, or several, cooperative(s) and others to the Amendment 80 limited access fishery in an effort to quickly harvest the Amendment 80 limited access fishery ITAC using vessels with greater fishing capacity. The Council recommended the Program specifically to discourage fishing practices that accelerate the race for fish in the Amendment 80 limited access fishery. Requiring a QS holder to fully commit to a cooperative would provide additional incentives to achieve the Program's objectives.

C. Economic Data Report (EDR) Submission and CQ

Effective in 2009, NMFS would not issue CQ to an Amendment 80 cooperative derived from QS permits held by cooperative members who have not submitted a timely and complete EDR for each Amendment 80 QS permit they hold. The specific requirements for submitting an EDR are provided in Section XIII of this preamble. The EDR submission requirement would not penalize members of an Amendment 80 cooperative who have submitted an EDR, but would limit the ability of a cooperative to use CQ derived from a QS holder who fails to comply with this provision.

D. Issuing Amendment 80 Species CQ

Once NMFS has approved an application for CQ, NMFS would issue a CQ permit to the cooperative. The CQ permit would list the metric tons of Amendment 80 species that the cooperative may catch, and the metric tons of halibut PSC and number of crab PSC that the cooperative may use during the fishing year. The following is a brief description of the process NMFS would use for calculating the amount of CQ issued to a cooperative. This description assumes that NMFS has already determined the amount of ITAC that would be assigned to the Amendment 80 sector for the year (see Section IV of this preamble). A more detailed description with an example of CQ allocation to a hypothetical cooperative is provided in Section XI of this preamble.

1. Allocating CQ and ITAC for Amendment 80 Species Other than Atka Mackerel

For each Amendment 80 species except Atka mackerel, the metric tons that the cooperative may harvest in a calendar year would be based on the following general formula:

CQ for that Amendment 80 cooperative = Amendment 80 sector ITAC for a management area × (Σ Amendment 80 QS held by all cooperative members / Amendment 80 QS pool).

Pacific cod, flathead sole, rock sole, or yellowfin sole CQ would be issued for use by the cooperative in the BSAI. These four species re not managed with separate TACs in each management area. AI POP CQ would be assigned to a cooperative for each management area in the Aleutian Islands subarea (*i.e.*, Areas 541, 542, and 543) proportional to the amount of ITAC assigned to that area. For example, if an Amendment 80 cooperative is assigned 10 percent of the AI POP QS pool, that cooperative would receive 10 percent of the ITAC assigned to the AI POP fishery for the Amendment 80 sector in Areas 541, 542, and 543. A detailed example of CQ allocation is provided in Section XI of this preamble.

Once NMFS determines the amount of CQ issued to each cooperative for each Amendment 80 species, the ITAC remaining in a management area would be assigned to the Amendment 80 limited access fishery as follows:

Amendment 80 Limited Access Fishery ITAC in a management area = Amendment 80 Sector ITAC in a management area—(Σ CQ issued to all Amendment 80 cooperatives in a management area).

2. Allocating CQ and ITAC for Atka Mackerel

As noted in Section VI of this preamble, specific provisions are proposed to allocate Atka mackerel QS derived from non-mackerel vessels. If an Amendment 80 QS permit with non-mackerel QS is assigned to a cooperative, NMFS would assign Atka mackerel CQ derived from that non-mackerel QS by management area first. NMFS would determine the amount of CQ for Atka mackerel assigned to each Amendment 80 cooperative in a management area as the sum of the CQ derived from non-mackerel QS and mackerel QS using the following process:

- *Step 1: Assigning the non-mackerel and mackerel QS pools.* NMFS would first determine the total non-mackerel QS pool, and the percentage of the non-mackerel QS pool, and number of QS units that would be assigned to each management area. The remaining amount of Atka mackerel QS units would be assigned to the mackerel QS pool, which would not be designated for specific management areas.
- *Step 2: Allocating CQ to each Amendment 80 cooperative.* For each Amendment 80 cooperative, NMFS would determine the amount of CQ assigned to that cooperative in each management area based on the amount of non-mackerel QS units and mackerel QS units assigned to that cooperative. The series of calculations that follow are shown in a specific example in Section XI of this preamble:

First, NMFS would determine the amount of non-mackerel ITAC in each management area using the following equation:

Non-mackerel ITAC in a management area = (Non-mackerel QS units designated for that management area / Total mackerel and non-mackerel QS pool) × Amendment 80 sector ITAC in all management areas.

Second, NMFS would determine the amount of mackerel ITAC in each management area using the following equation:

Mackerel ITAC in a management area = Amendment 80 sector ITAC in that management area − non-mackerel ITAC in that management area.

Third, NMFS would determine the amount of non-mackerel CQ assigned to an Amendment 80 cooperative in a each Atka mackerel management area (i.e, Area BS/541, Area 542, and Area 543) using the following equation:

Non-mackerel CQ assigned to that Amendment 80 cooperative = (Non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative / Non-mackerel QS pool in that management area) × Non-mackerel ITAC for that management area.

Fourth, NMFS would determine the amount of mackerel CQ assigned to the Amendment 80 cooperative in each Atka mackerel management area using the following equation:

Mackerel CQ in a management area = (Mackerel QS units assigned to that Amendment 80 cooperative / Mackerel QS pool) × Mackerel ITAC in that management area.

Fifth, the total Atka mackerel CQ (non-mackerel CQ and mackerel CQ combined) assigned to a cooperative would be the sum of calculations presented in the third and fourth steps described above.

Finally, NMFS would allocate the amount of ITAC remaining in a management area after allocation to all of the Amendment 80 cooperatives to the Amendment 80 limited access fishery as follows:

Amendment 80 limited access fishery ITAC in a management area = Amendment 80 sector ITAC − Σ mackerel and non-mackerel CQ issued to all Amendment 80 cooperatives in that management area.

E. Issuing Prohibited Species Catch (PSC) CQ

1. Method for PSC CQ Issuance

The Council considered various alternatives to assign crab and halibut PSC to the Amendment 80 cooperatives in the draft EA/RIR/IRFA (see **ADDRESSES**) prepared for this action. The primary rationale for assigning PSC as proposed in the Program is to ensure that there is adequate PSC available to support existing PSC rates while fishing for non-pollock groundfish, with some reduction in the amount of PSC assigned to accommodate the anticipated improvements in bycatch rates made possible by cooperative management.

The Program would authorize NMFS to issue halibut and crab PSC CQ to each Amendment 80 cooperative based on the following procedure: (1) Determine the historic use of PSC by the Amendment 80 sector during the same period used to allocate Amendment 80 QS (1998 through 2004); (2) determine the amount of halibut and crab PSC that has been historically used during the catch of each Amendment 80 species; (3) assign each Amendment 80 cooperative an amount of PSC based on the proportion of QS assigned to that cooperative for that Amendment 80 species; and (4) sum the result from each Amendment 80 species to derive a total PSC allocation that would be assigned as PSC CQ to Amendment 80 cooperative to support PSC needs for any groundfish fishing conducted by the cooperative in the BSAI. PSC assigned to a cooperative as CQ would be used while the cooperative catches any Amendment 80 species and any non-allocated groundfish species (*e.g.*, Alaska plaice, arrowtooth flounder, and Greenland turbot).

The amount of PSC assigned to the Amendment 80 sector would be based on the Amendment 80 sector's historic PSC use rates during the 1998 through 2004 time period, with adjustments to reduce PSC limits. Section IV of this preamble describes the amount of PSC allocated to the Amendment 80 sector in greater detail. The amount of PSC that is apportioned to each Amendment 80 species would be based on historic PSC use while Amendment 80 vessels were directed fishing for that Amendment 80 species during the 1998 through 2004 time period. The percentage of PSC used in each Amendment 80 fishery is shown in Section XI of this preamble.

Amendment 80 species, such as Pacific cod, that have relatively high rates of halibut PSC use, would be apportioned a relatively greater portion of the total halibut PSC assigned to the Amendment 80 sector. Crab PSC and halibut PSC would be apportioned among cooperatives based on the amount of QS assigned to that cooperative. For example, a cooperative assigned a relatively greater amount of Pacific cod QS would receive a larger proportion of the PSC apportioned to Pacific cod than a cooperative assigned a lesser amount of Pacific cod QS.

For each Amendment 80 species, NMFS would divide the amount of Amendment 80 QS that would be assigned to an Amendment 80 cooperative by the Amendment 80 QS pool for that species. This would yield the percentage of Amendment 80 QS units that would be assigned to that Amendment 80 cooperative. This percentage would be multiplied by the total PSC apportioned to that Amendment 80 species. This calculation would be repeated for each of the six Amendment 80 species. The sum of these calculations would result in an amount in metric tons that would be the total halibut or crab species PSC CQ issued to a specific Amendment 80 cooperative. After allocating PSC to each Amendment 80 cooperative, NMFS would allocate the remaining PSC to the Amendment 80 limited access fishery. A detailed example of this process of assigning PSC to an Amendment 80 cooperative is provided in Section XI of this preamble.

Under this process, Amendment 80 cooperatives would receive an amount of PSC that reflects the aggregate historic use of PSC for each of the Amendment 80 species QS assigned to that cooperative. The PSC CQ that is derived from a specific Amendment 80 species would not be required to be used solely for the prosecution of that Amendment 80 species. As an example, halibut PSC attributed to a specific Amendment 80 species for a specific Amendment 80 cooperative is intended to be used to support the harvest of Amendment 80 species and non-Amendment 80 species (e.g., arrowtooth flounder and Greenland turbot) by that cooperative.

2. Use of Halibut PSC CQ by an Amendment 80 Cooperative

Halibut PSC CQ issued to an Amendment 80 cooperative could only be used by the members of the Amendment 80 cooperative to which it is assigned, unless modified by transfer according to the procedures in the proposed regulatory text in § 679.91(f). (See Part I of this section below for more detail). Halibut PSC CQ would not be subject to seasonal apportionment. This flexibility would aid cooperatives by allowing them to minimize catch with high halibut PSC rates during specific time periods, modify fishing patterns, and fish in areas with lower halibut PSC rates to maximize the benefits derived from their halibut PSC CQ.

3. Use of Crab PSC CQ by an Amendment 80 Cooperative

As with halibut PSC CQ, only cooperative members could use crab

PSC CQ, unless transferred. Crab PSC QS would not be subject to seasonal apportionment. Because crab PSC would be assigned for use in specific to geographic regions, cooperative managers would need to properly track and monitor the use of crab PSC by cooperative vessels to ensure that adequate crab PSC CQ is available. For example, Zone 1 *C. bairdi* PSC CQ would be deducted when *C. bairdi* PSC CQ is used in Zone 1, and the Zone 2 *C. bairdi* PSC CQ would be deducted when *C. bairdi* PSC CQ is used in Zone 2. The specific geographic regions to which these crab PSC limits apply are defined in regulation in § 679.2. Any crab PSC caught by a vessel outside of these geographic areas would not be debited against the crab PSC CQ assigned to a cooperative.

F. Restrictions While Fishing for Amendment 80 Cooperatives

In addition to the M&E requirements described in Section XII of this preamble, several other requirements are proposed for Amendment 80 cooperatives and their members. These requirements would include the following:

- Restrictions on vessels, QS, and LLP licenses assigned to an Amendment 80 cooperative;
- Meeting the GRS at the cooperative level;
- Fishing during the trawl fishing season;
- Compliance with Steller sea lion protection measures; and
- Recordkeeping and reporting requirements.

1. Restrictions on Vessels, QS, and LLP Licenses Assigned to an Amendment 80 Cooperative

NMFS would prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to an Amendment 80 cooperative to harvest, process, receive, or use (1) Any CQ assigned to any other Amendment 80 cooperative; or (2) any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access fishery. This prohibition would ensure that NMFS could track CQ assigned to a specific cooperative. This would not compromise the ability of an Amendment 80 cooperative to transfer catch to another Amendment 80 cooperative should such an arrangement be more profitable or necessary. Similarly, catch from the Amendment 80 limited access fishery could not be caught, processed, or received by a vessel assigned to an Amendment 80 cooperative to ensure that NMFS can track and assign catch to the appropriate CQ or limited access fishery account.

Any Amendment 80 vessel that is used to catch CQ for a cooperative would have to carry a copy of the valid CQ permit onboard the vessel while the vessel is fishing in the BSAI and adjacent State waters during the parallel fishery. Because some Amendment 80 species, halibut PSC, and crab PSC CQ are likely to be harvested while fishing for non-Amendment 80 species (e.g., halibut PSC is used during the harvest of arrowtooth flounder), a CQ permit would need to be onboard an Amendment 80 vessel fishing for a cooperative whenever that vessel is fishing in the BSAI.

An Amendment 80 cooperative could not catch in excess of the amount of Amendment 80 species, crab PSC CQ, or halibut PSC CQ assigned to the CQ permit for an Amendment 80 cooperative. If an Amendment 80 cooperative wished to catch more CQ than initially issued, additional CQ could be received by transfer.

2. Meeting the GRS at the Cooperative Level

Under the Program, NMFS would apply the GRS to an Amendment 80 cooperative as an aggregate standard, and not as a vessel specific standard. Applying the GRS as an aggregate limit is likely to help reduce operational costs incurred for vessels in the cooperative to meet the GRS, particularly for vessels under 125 ft (38.1 m) LOA while continuing to achieve the goal of the GRS to increase retention and reduce discard of fish. Cooperative managers and members would need to track total and retained catch of all vessels fishing for the cooperative to ensure compliance with the GRS.

NMFS would calculate the GRS based on the aggregate groundfish retention and catch by all vessels in the cooperative. Section 679.28 in the proposed regulatory text describes that calculation. NMFS would monitor the cooperative as a whole, and violations of the GRS applicable to the cooperative would be enforced on the cooperative and individual cooperative members through joint and several liability (see Part G of this section of the preamble below).

Practically, this provision would require the Amendment 80 cooperative manager to monitor total catch by vessels in the cooperative, including Amendment 80 species caught under the CQ permit as well as non-allocated species (e.g., arrowtooth flounder), to ensure that the retention standard applicable for a given year is achieved by the cooperative as a whole. See § 679.27(j)(4) in the proposed rule text for additional detail. The specific method for negotiating and managing retention rates among the members of the cooperative could be addressed through private contractual arrangements. Vessels used by the cooperative that have higher groundfish retention rates in some fisheries (e.g., Atka mackerel) could offset lower retention rates in other fisheries, like rock sole, by the other vessels used by the cooperative.

Because membership in a cooperative is voluntary, if the owner of an Amendment 80 vessel less than 125 ft (38.1 m) LOA chooses not to join a cooperative, that vessel would be subject to the GRS while fishing in the Amendment 80 limited access fishery and would have to comply with GRS requirements without the potential benefits of an aggregate retention rate.

3. Fishing During the Trawl Fishing Season

Current regulations prohibit the use of trawl gear in the BSAI prior to January 20. Vessels harvesting CQ for an Amendment 80 cooperative would continue to be limited to fishing for CQ during the current open periods for vessels using trawl gear (from January 20 through December 31). The rationale for maintaining the current trawl fishing season for Amendment 80 vessels is based on the fact that the vast majority of the legal landings used to generate the QS allocated under the Program were caught during the trawl fishery. Allowing Amendment 80 vessels to harvest prior to January 20 would increase the risk for gear conflicts with existing fisheries (e.g., fixed gear Pacific cod fisheries), run counter to specific protection measures for Steller sea lions, and provide a harvest opportunity that was not previously available to non-AFA trawl catcher/processors.

4. Compliance With Steller Sea Lion Protection Measures

Nothing in the Program would modify existing restrictions to protect Steller sea lions (*Eumetopias jubatus*). Amendment 80 cooperatives and vessels would continue to be subject to area closures and seasonal harvest limits established as part of the Steller sea lion protection measures. Primarily, these measures would continue to affect catch of Atka mackerel and Pacific cod because these species are identified as key prey species for Steller sea lions and are subject to more restrictive management than other groundfish species.

As an example, Steller sea lion protection measures seasonally

apportion the Atka mackerel and Pacific cod ITAC to disperse directed fishery harvests during the fishing year. Temporally dispersing harvests reduces potentially adverse effects on Steller sea lion populations from the groundfish fisheries. NMFS would issue an amount of ''A season CQ'', and ''B season CQ'' for Atka mackerel in proportion to the amount of ITAC assigned to each season. A CQ permit issued for the B season could not be used to catch Atka mackerel in the A season. However, if a cooperative did not fully use it's A season CQ permit during that season, the remaining CQ amount could be used during the B season, subject to the total CQ limit for that cooperative. Similar measures would apply to Pacific cod CQ permits. These provisions would ensure that harvests of Atka mackerel and Pacific cod by Amendment 80 cooperatives do not exceed seasonal harvest limits consistent with the Steller sea lion protection measures. The seasonal and ITAC apportionments are specified in the general limitations at 50 CFR 679.20(a).

Additionally, Amendment 80 vessels wishing to harvest Atka mackerel would continue to be subject to harvest limit area (HLA) regulations under § 679.20(a)(8)(ii)(C). Those regulations require vessels to register to fish for Atka mackerel in either Area 542 or 543 and prohibit those vessels from participating in any groundfish directed fishery until the first HLA fishery is closed. For purposes of applying these restrictions, NMFS would continue to define directed fishing as that term is defined under § 679.2. Amendment 80 vessels harvesting CQ and ITAC in the Atka mackerel fishery in Area 542 or 543 must comply with the existing HLA requirements at § 679.20(a)(8)(iii)(E).

Amendment 80 vessels fishing under a CQ permit could catch and retain Amendment 80 species, including Atka mackerel and Pacific cod during the entire fishing year provided there is adequate CQ. NMFS would not open and close directed fishing for Amendment 80 cooperatives. However, this condition would not alter the method NMFS uses to define directed fishing for purposes of applying Steller sea lion protection measures. Steller sea lion protection measures prohibit a vessel using trawl gear from directed fishing for Atka mackerel, Pacific cod, or pollock after November 1. (See § 679.23(e) for additional detail). For Amendment 80 vessel operators, this requirement would limit the retention of Pacific cod or Atka mackerel greater than an amount that would meet the definition of directed fishing. If an Amendment 80 vessel retains an amount of Atka mackerel or Pacific cod greater than 20 percent of the total groundfish open for directed fishing onboard the vessel, that Amendment 80 vessel would be considered directed fishing for Atka mackerel or Pacific cod for purposes of enforcing Steller sea lion protection measures.

Additionally, Amendment 80 vessels using trawl gear would be restricted from directed fishing for Atka mackerel, Pacific cod, or pollock, as that term is defined in § 679.2, within a specific area during specific times of year. Directed fishing is defined as any fishing that results in retention of any species greater than the maximum retainable amount for that species. Areas subject to directed fishing closures to trawl gear to protect Steller sea lions are described under § 679.22.

5. Recordkeeping and Reporting Requirements

Amendment 80 vessels assigned to Amendment 80 cooperatives would be required to submit catch reports necessary to track catch. In addition to specific M&E requirements detailed under Section XII of this preamble, Amendment 80 vessels would need to submit the following information, which is detailed in the regulatory text in § 679.5 of this proposed rule:

a. Logbook;

b. Check-in/check-out report;

c. Weekly production report (WPR); and

d. Product transfer report (PTR).

NMFS intends to submit a separate proposed rule to require use of an Interagency Electronic Reporting System (IERS) for BSAI groundfish fisheries. If approved, IERS would supersede some of the recordkeeping and reporting requirements proposed in this rule. The IERS is currently required in the BSAI crab fisheries, and is used by processors in the halibut and sablefish IFQ program to report catch electronically in a timely fashion. A detailed description of IERS is available on the NMFS Web site at: *http://www.fakr.noaa.gov/rr/default.htm.*

An Amendment 80 cooperative would be required to submit by March 1 of each year an annual Amendment 80 cooperative report detailing the use of the cooperative's CQ and fishing activities during the prior calendar year. The first annual cooperative report would be due on March 1, 2009, and every March 1 thereafter. Section 679.5 in the proposed regulatory text details the information that would be required in the report. Briefly, this information includes the following:

- The cooperative's actual retained and discarded catch of CQ, and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;
- A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and
- A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the Amendment 80 cooperative agreement.

G. Joint and Several Liability

As with other cooperative-based LAPPs (e.g., Central GOA Rockfish Program) NMFS would enforce violations of an Amendment 80 cooperative jointly and severally on the members of the cooperative. Each member of an Amendment 80 cooperative would be subject to joint and several liability for any violations of the Program regulations while fishing under authority of a CQ permit. This liability could extend to any persons who are hired to catch or receive CQ assigned to a Amendment 80 cooperative. Each member of an Amendment 80 cooperative would be responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Program. Joint and several liability encourages better compliance by ensuring that members of an Amendment 80 cooperative would not be immune from legal responsibility from violations of the regulations that would directly benefit them.

H. Rollover of Initial Total Allowable Catch (ITAC), Incidental Catch Allowance (ICA), and PSC From the BSAI Trawl Limited Access Sector

To reduce the possibility that a substantial portion of the ITAC of Amendment 80 species is unharvested, or PSC is unused, NMFS would have the authority to rollover any projected unharvested portion of ITAC or ICA or unused PSC from the BSAI trawl limited access sector to the Amendment 80 sector under specific conditions. Based on historic and current catch patterns analyzed in the draft EA/RIR/IRFA prepared for this action, a portion of the Amendment 80 species ITAC or ICA assigned to the BSAI trawl limited access sector is likely to be unharvested or unused. Similarly, it is possible that a portion of the halibut PSC or crab PSC assigned to the BSAI trawl limited access sector would not be fully used if that sector continues to target species such as pollock that have relatively low PSC use rates. The proposed rule would provide NMFS the flexibility to implement rollovers on a species-by-

species basis, or to rollover different species at different times of the year to accommodate the fishing patterns of Amendment 80 cooperatives.

Although the harvest patterns of non-pollock groundfish by participants in the BSAI trawl limited access sector have varied, the rollover provision would help ensure that fishery resources would be allocated and available for harvest to the extent practicable. Recently, favorable stock abundance and market conditions in other fisheries such as pollock and Pacific cod have encouraged non-Amendment 80 sector participants to target these stocks. These conditions are likely to continue for the foreseeable future and the emphasis on targeting pollock and Pacific cod is unlikely to shift soon.

The Program would maximize the likelihood that a rollover would be used by assigning that rollover only to Amendment 80 cooperatives and not to the Amendment 80 limited access fishery. Amendment 80 cooperatives are likely to be more efficient at harvesting small allocations through their cooperative arrangements, whereas the Amendment 80 limited access fishery is likely to be less efficient as it harvests under a race for fish. The purpose of the rollover is to encourage efficient harvest of allocated resources, and allocating to the Amendment 80 limited access fishery would be unlikely to accomplish that goal.

1. Criteria for Rolling Over ITAC, ICA, or PSC

Before rolling over any portion of ITAC, ICA, or PSC, NMFS would carefully review several criteria to ensure that the BSAI trawl limited access sector would not be adversely affected. Specifically, NMFS would consider the following factors:

- The risk of biological harm to a groundfish species or species group;
- The risk of socioeconomic harm to other domestic fishery participants;
- The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;
- Current catch and PSC use in the BSAI trawl limited access sector;
- Historic catch and PSC use in the BSAI trawl limited access sector;
- Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;
- Administrative requirements to reissue CQ permits; and
- Any other relevant biological, socioeconomic, or administrative factors.

NMFS would review the potential of rolling over ITAC, ICA, or PSC periodically during the year. The Council recommended reviews on or before May 1 and August 1 each year, and at other times after August 1 as NMFS deems appropriate. This phrasing used by the Council has been interpreted to give NMFS broad latitude in determining the timing of a rollover. NMFS would consider rollover provisions at its discretion.

2. Rollover Provisions for ITAC and ICA Other Than Pacific Cod

The amount of ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector that would be reallocated as CQ to an Amendment 80 cooperative would equal the ratio of CQ initially assigned to the cooperative as a proportion of all CQ initially assigned to all cooperatives for that calendar year. For example, if NMFS rolled over Atka mackerel ICA from the BSAI trawl limited access sector to Amendment 80 cooperatives, a cooperative that was initially issued 10 percent of the Atka mackerel CQ at the start of the fishing year would receive 10 percent of this rollover CQ.

This method for assigning rollover CQ would reduce administrative burdens and speed reissuance of CQ. For example, if an intercooperative transfer is pending at the time a CQ rollover is planned, apportioning the rollover CQ to cooperatives based on the amount of CQ initially issued to that cooperative would avoid potential delays. Otherwise, to ensure that the amount of rollover CQ is properly assigned, NMFS would likely wait until the transfer is reviewed and approved, which could further delay issuance of rollover CQ. The following formula describes the proposed rollover allocation to a cooperative:

Amount of rollover CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives × (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative/Σ CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

3. Rollover Provisions for Pacific Cod

Section IV of this preamble describes in detail the rollover provisions that would apply to Pacific cod should Amendment 85 be implemented. That discussion is not repeated here.

4. Rollover Provisions for Halibut PSC

If, during a fishing year, NMFS reallocates halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives as rollover CQ, NMFS would issue a revised CQ permit to each Amendment 80 cooperative according to the following procedure.

First, NMFS would multiply the amount of halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC that may be rolled over to Amendment 80 cooperatives. The rollover amount of halibut PSC would be reduced by five percent as a means of reducing bycatch and leaving some additional halibut PSC unused or ''in the water.''

After this five percent deduction is made, the amount of halibut PSC rolled over to each Amendment 80 cooperative would be calculated using the following formula:

Amount of halibut PSC rollover CQ reallocated to an Amendment 80 cooperative = Amount of halibut PSC CQ available for reallocation to Amendment 80 cooperatives × (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative/Σ halibut PSC CQ assigned to all Amendment 80 cooperatives).

5. Rollover Provisions for Crab PSC

If, during a fishing year, NMFS reallocates a crab PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives as CQ, NMFS would issue a revised CQ permit to each Amendment 80 cooperative according to the following procedure:

Amount of crab PSC rollover CQ reallocated to an Amendment 80 cooperative = Amount of crab PSC CQ available for reallocation to Amendment 80 cooperatives × (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative / Σ that crab PSC CQ assigned to all Amendment 80 cooperatives).

Because the Program substantially reduces the amount of crab PSC that is available for use by the Amendment 80 sector (see Section IV of this preamble), the Council determined that and additional PSC reductions would not be required when crab PSC is rolled over. Therefore, NMFS would not deduct a portion of the crab PSC that is rolled over to Amendment 80 cooperatives, as is proposed for halibut PSC rollovers (i.e., there is no five percent reduction).

I. CQ Transfers

An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Transfer provisions have been part of all LAPPs adopted by NMFS in the North Pacific, and the Program would provide the same flexibility for Amendment 80 cooperatives to trade species for harvest or PSC for use as required for particular fishing operations or to accommodate unforeseen circumstances.

The CQ intercooperative transfer would require the submission of an application for CQ transfer which would be available on the NMFS Web site at *http://www.fakr.noaa.gov*. NMFS would review and approve the transfer application to ensure proper catch accounting. NMFS would notify the transferor and transferee once the application has been received and approved. A transfer of CQ would not be effective until approved by NMFS. The proposed regulatory text (see § 679.92(g)) details the information that would have to be submitted in an application for CQ transfer. The requirements are briefly summarized here:

- Identification of transferor;
- Identification of transferee;
- Identification of CQ type and amount to be transferred;
- Identification of Amendment 80 cooperative member receiving CQ. NMFS would require the name of the cooperative member(s) and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps;
- Certification of transferor. The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief; and
- Certification of transferee. The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief.

J. Fishing Non-Allocated Groundfish Species

Non-pollock groundfish species not allocated as Amendment 80 species to the Program (e.g., Greenland turbot) could be harvested by vessels assigned to an Amendment 80 cooperative if NMFS establishes a TAC for those species that would be sufficient to allow directed fishing during the annual harvest specification process. An Amendment 80 cooperative could only directed fish on such non-pollock groundfish species if the cooperative has sufficient Amendment 80 species and PSC CQ to account for any incidental harvest of Amendment 80 species or PSC used while directed fishing for that non-allocated species.

Although NMFS would monitor the use of any CQ assigned to a cooperative, vessel operators in an Amendment 80 cooperative could choose to use some amount of CQ for incidental catch needs while targeting non-allocated species. This could increase the potential for participants in Amendment 80 cooperatives to modify current harvest patterns or the share of harvests of non-allocated groundfish species among vessels using various gear types (e.g., a greater percentage of the Greenland turbot TAC could be harvested by Amendment 80 vessels using trawl gears than is currently the case). This issue was reviewed by the Council during the development of the Program. The Council did not recommend specifically restricting participation of Amendment 80 cooperatives in these non-allocated groundfish fisheries due to the limited percentage of the TAC currently harvested in these fisheries (e.g., Alaska plaice, arrowtooth flounder, Greenland turbot) and the lack of a clear race for fish.

VIII. Amendment 80 Limited Access Fishery

A. Membership in the Amendment 80 Limited Access Fishery

The Amendment 80 limited access fishery would be comprised of Amendment 80 QS holders who are unwilling or unable to form cooperative arrangements with other Amendment 80 QS holders. The Amendment 80 limited access fishery would be assigned the amount of ITAC, crab PSC, and halibut PSC assigned to the Amendment 80 sector that remains after allocations of CQ have been made to Amendment 80 cooperatives. Unlike Amendment 80 cooperatives, participants in the Amendment 80 limited access fishery would not receive an exclusive harvest privilege and would continue to compete for the ITAC and use of crab PSC and halibut PSC. The specific process for issuing ITAC and PSC to cooperatives is described in Section VII of this preamble and is not reiterated here.

Amendment 80 QS holders, vessel owners, and LLP license holders who participate in the Amendment 80 limited access fishery could not assign or otherwise use those QS permits, Amendment 80 vessels, or LLP licenses to fish for an Amendment 80 cooperative during the same calendar year for the remainder of the calendar year.

B. Application for the Amendment 80 Limited Access Fishery

Amendment 80 QS holders wishing to assign their QS to the limited access fishery would need to submit an annual application, by November 1 of the year prior to fishing. The application process and contents are similar to those proposed for the application for CQ described under Section VII of this preamble. Specific proposed requirements are described in § 679.91(b) of the proposed regulatory text. In order to participate in the Amendment 80 limited access fishery, a complete application would have to be submitted in a timely manner. Failure to submit a complete application would prevent the use of any QS permits, Amendment 80 vessels, or LLP licenses from being used to fish in the Amendment 80 sector. This requirement to submit a complete application would encourage compliance and ensure that Amendment 80 sector ITAC is properly allocated for the upcoming fishing season.

C. Management of the Amendment 80 Limited Access Fishery

1. Fishery Openings and Closings

NMFS would manage openings and closings of the Amendment 80 limited access fishery much as it currently manages the existing fisheries. NMFS would open directed fishing for an Amendment 80 species only if there is sufficient ITAC assigned to the Amendment 80 limited access fishery. In addition, halibut PSC and crab PSC assigned to the Amendment 80 limited access fishery would continue to be apportioned among target fishery categories, and halibut PSC would continue to be based on seasonal apportionments as established in § 679.21.

NMFS would close a fishery for an Amendment 80 species if the ITAC assigned to the fishery is taken, or projected to be taken. Similarly, NMFS could close the Amendment 80 limited access fisheries if the halibut PSC or crab PSC limit assigned to a target fishery category within the Amendment 80 limited access fishery is taken, or projected to be taken. Catch or PSC use inside State waters would accrue against the ITAC or PSC limit assigned to an Amendment 80 limited access fishery consistent with the catch accounting procedures for CQ use by Amendment 80 cooperatives and other LAPPs (e.g., Central GOA Rockfish Program).

2. Steller Sea Lion Protection Measures

Steller sea lion protection measures would continue to apply to Amendment 80 vessels assigned to the Amendment 80 limited access fishery, including seasonal harvest limits for Akta mackerel and Pacific cod, Atka mackerel HLA limits, and restrictions on directed fishing for Atka mackerel and Pacific cod using trawl gear after November 1, and in specific areas as described under § 679.22. See Section VII of this preamble for more detail on this issue.

3. GRS Requirements

Amendment 80 vessels assigned to the Amendment 80 limited access fishery would be subject to the GRS on an individual vessel basis, including Amendment 80 vessels that are less than 125 ft (38.1 m) LOA. As noted in the IRFA prepared to support this action (see **ADDRESSES**), under the Program, Amendment 80 vessels that were previously exempted from the GRS (i.e., non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA) due to the compliance costs for these vessels would have the option of participating in a cooperative to help offset any costs that may be associated with the GRS.

4. Monitoring and Enforcement (M&E) Requirements

The M&E requirements and recordkeeping and reporting provisions that would be applicable to Amendment 80 vessels assigned to an Amendment 80 cooperative also apply to the Amendment 80 limited access fishery. The specific M&E requirements applicable to Amendment 80 vessels fishing in the Amendment 80 limited access fishery are described in greater detail in Section XII of this preamble. NMFS notes that Amendment 80 vessels fishing in the Amendment 80 limited access fishery would be required to submit the same recordkeeping and reporting documents required for Amendment 80 vessels assigned to Amendment 80 cooperatives with one exception, the annual cooperative catch report would not be required. See Section VII of this preamble for a proposed list of recordkeeping and reporting requirements.

D. ITAC and PSC Assigned to the Amendment 80 Limited Access Fishery

1. Amount of ITAC and PSC Assigned

The Amendment 80 limited access fishery would be assigned that amount of Amendment 80 sector ITAC, crab PSC, and halibut PSC not assigned to the Amendment 80 cooperatives. Section VII of this preamble describes the allocation to cooperatives and the Amendment 80 limited access sector. Section IV of this preamble provides a detailed example of the allocation of ITAC and PSC to the Amendment 80 limited access fishery. As noted in Sections IV and VII of this preamble, Amendment 80 vessels assigned to the Amendment 80 limited access fishery would be restricted from processing catch assigned to either the BSAI trawl limited access fishery, or an Amendment 80 cooperative. This requirement would appear to best meet the Council intent of providing clear and distinct allocations, minimize the complexities of tracking multiple quota types onboard a single vessel, and reduce complications that could arise when assessing minimum GRS standards on a vessel that is receiving catch subject to different regulatory requirements. Specifically, Amendment 80 cooperatives are assessed the GRS on an aggregate basis, whereas Amendment 80 vessels in the Amendment 80 limited access fishery do not. NMFS has not proposed a mechanism to assess management of these conflicting GRS standards on the same vessel.

2. Economic Data Report (EDR) Submission

Effective in 2009, an Amendment 80 QS holder wishing to participate in the Amendment 80 limited access fishery would need to submit a timely and complete EDR, as described in Section XIII of this preamble. If an Amendment 80 QS holder failed to submit a timely and complete EDR, NMFS would not issue that person an Amendment 80 limited access fishery permit for that calendar year.

E. Fishing for Non-Allocated Groundfish Species

Non-pollock groundfish species not allocated to the Program would be subject to status quo management for participants in the Amendment 80 limited access fishery. NMFS would establish the TAC for these species during the annual harvest specification process. The Council would also recommend the amount of PSC that is assigned to the Amendment 80 limited access fishery participants while harvesting non-allocated groundfish fisheries through the annual specification process.

IX. Use Caps

A. LAPPs and Use Caps

LAPPs developed in the North Pacific have included specific provisions to establish limits, or use caps, on the amount of consolidation of harvest or processing privileges. Use caps have been incorporated in LAPPs to reduce the risk of excessive consolidation to a few persons, which could unduly restrict the ability of smaller competitors to effectively compete. The Program would include use caps consistent with past practice and consistent with the MSA that requires consideration of use limits to prevent a person from holding an excessive share of any harvest privilege. The levels of the use caps established under the Program were deliberated throughout the Program's development (see draft EA/RIR/IRFA in **ADDRESSES** for additional detail). The specific use cap limits that would be established under the Program were designed with the goal of constraining the Amendment 80 QS holders likely to receive the greatest amount of QS in the initial allocation process from using more than this amount.

The Program would establish use caps that apply to a person, and another use cap that applies to the operation of an Amendment 80 vessel. Specifically, there would be two types of person use caps: one type of person use cap would limit the amount of Amendment 80 QS units that a person could hold on his or her Amendment 80 QS permits; the other type of person use cap would limit the amount of Amendment 80 species CQ that may be used by a person. The vessel use cap would limit the amount of the Amendment 80 sector ITAC that could be harvested on an Amendment 80 vessel.

The regulations would prohibit persons from exceeding the person and vessel use caps. The regulations would provide one exemption to this prohibition in the case of person use caps. A person could exceed a person use cap only if that person received an initial allocation of QS that exceeds the use cap. A provision that allows a person to exceed a person use cap is commonly known as a ''grandfather clause'' in other LAPPs. The Program's grandfather clause would apply only to person use caps, not to the vessel use cap. The Program would not apply a grandfather clause to the Amendment 80 vessel use cap because data reviewed by the Council and NMFS indicate that no Amendment 80 vessel been used to harvest more Amendment 80 species than the proposed vessel use cap historically, and there does not appear to be any need to exempt Amendment 80 vessels from this proposed restriction.

B. Person Use Caps

1. QS Holding Cap—30 Percent Cap

With the exception of person's qualifying under the proposed grandfather clause, a person would not be permitted to individually or collectively hold more than 30 percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector. As with other LAPPs (e.g., Central GOA Rockfish Program), NMFS would use the Amendment 80 initial QS pool as the basis for calculating the person QS use cap. Because the Amendment 80 initial QS pool would not fluctuate due to appeals, enforcement actions, or other operations of law, it would provide a fixed measure of the maximum amount of QS that could be held by a person.

The number of Amendment 80 QS units for each Amendment 80 species in the Amendment 80 initial QS pool would be based on the Amendment 80 official record as of December 31, 2007. Fixing the initial QS pool by this date would give NMFS time to review applications for QS, resolve those claims, and adjust the Amendment 80 official record accordingly. Once the Amendment 80 initial QS pool is determined, the person QS use cap would be set at 30 percent of the total aggregate QS units for all Amendment 80 species. Section XI of this preamble provides a detailed example of how the Amendment 80 initial QS pool would be established and provides an estimate of the 30 percent cap.

2. QS Holding Cap Exemption—The Grandfather Clause

A person would be allowed to exceed the QS holding cap only if that person receives Amendment 80 QS permits based on Amendment 80 legal landings derived from Amendment 80 vessels owned, or Amendment 80 LLP licenses held by that person prior to June 9, 2006, and at the time of application for Amendment 80 QS. This provision is commonly known as a grandfather clause, and has been applied in all other North Pacific LAPPs to accommodate harvesters likely to receive relatively large harvest shares, but restrict them from increasing their QS holdings beyond the amount initially received.

A person who wishes to acquire an Amendment 80 vessel or Amendment 80 LLP license and any legal landings assigned to that vessel or LLP license after June 9, 2006 (the date of final Council action recommending Amendment 80), would not be allowed to hold Amendment 80 QS in excess of the 30 percent cap. The Council recommended these conditions to prevent speculative purchases of any Amendment 80 vessels or Amendment 80 LLP licenses that could give rise to Amendment 80 QS after the date of final Council action. Prior to June 9, 2006, a person could not have reasonably predicted the precise cap that would apply, and the transfer of purchases of any Amendment 80 vessels or Amendment 80 LLP licenses prior to that date would not be limited.

3. CQ Use Cap—30 Percent Limit

The second type of person use cap would limit the amount of CQ that a person could use. Each year QS could yield either CQ that would be assigned to a cooperative, or ITAC that would be assigned to the Amendment 80 limited access fishery. Because CQ could be used exclusively by one person within a cooperative, the Program would limit the amount of CQ that could be used by a person. The limit on the amount of CQ a person can use would be calculated by summing the total amount of CQ that is derived from 30 percent of the Amendment 80 initial QS pool. A person's CQ use would include the amount of CQ that results from a person's QS holdings, and any amount of CQ assigned to that person through an intercooperative transfer of CQ. Even though a member of a cooperative may not directly harvest the CQ derived from his or her QS allocation, NMFS would consider the act of assigning QS and generating CQ for use by a cooperative as that person's use of CQ.

As part of an intercooperative transfer of CQ, NMFS would require CQ to be assigned to a specific member(s) of the cooperative receiving CQ to meet the overall goal of the CQ use cap—prevention of undue consolidation of harvest privileges. This would allow NMFS to track compliance with the use cap.

Because ITAC can fluctuate, and therefore the amount of CQ derived from each QS unit would fluctuate, the amount of CQ used by a person would need to be scaled to the amount of QS that gave rise to that CQ. For example, 30 percent of the total Amendment 80 QS pool would be a fixed amount of QS units. However, the amount of CQ in metric tons that would be generated from that 30 percent of the Amendment 80 initial QS pool would vary with the total ITAC of all Amendment 80 species, and the relative ITAC among each Amendment 80 species. Determining how much CQ a person is using is particularly problematic in the case of assigning CQ to a person in an intercooperative transfer. The metric tons of CQ derived from one unit of Atka mackerel QS, may differ from the metric tons of CQ derived from one unit of Aleutian Islands POP QS. If a cooperative transferred 10 metric tons of Atka mackerel CQ, that amount of Atka mackerel CQ could have been derived from more QS units than a transfer of 10 metric tons of AI POP CQ.

To ensure that CQ assigned to a cooperative member (i.e., used by that person) is not unduly affected by such fluctuations in ITAC, NMFS would calculate the CQ use cap by determining the amount of Amendment 80 QS units that were necessary to generate that amount of CQ for that Amendment 80 species. This amount of QS units would be added to the amount of aggregate Amendment 80 QS units held by the cooperative members to whom that CQ is assigned. If that summed amount of QS units is greater than 30 percent of the aggregate Amendment 80 initial QS pool for all Amendment 80 species, NMFS would not approve the intercooperative CQ transfer. For example, if the QS holding cap were 100 QS units, 100 QS units being equivalent to 30 percent of the Amendment 80 initial QS pool for all Amendment 80 species, and a cooperative member held 60 QS units, that cooperative member could not be assigned an amount of CQ that is greater than an amount derived from 40 QS units. If 80 Atka mackerel QS units yielded 10 metric tons of CQ, the cooperative member could only be assigned 40 QS units, equivalent to 5 metric tons of Atka mackerel CQ, in order to avoid exceeding the CQ use cap, and receive approval from NMFS for the transfer.

C. Vessel Use Cap

The Program would impose a 20 percent vessel use cap on Amendment 80 vessels. The vessel use cap would prevent consolidation of catch onboard Amendment 80 vessels. Unlimited consolidation could adversely affect harvesting crew through lost employment opportunities. In proposing the vessel use cap, the Council considered historic harvest levels aboard the existing Amendment 80 vessels to balance economic efficiency goals and employment opportunities. Those considerations are detailed in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**).

Vessel use caps would apply only to Amendment 80 species and would be calculated using the aggregate ITAC for all Amendment 80 species. An Amendment 80 vessel would be prohibited from catching an amount of Amendment 80 species in an amount greater than 20.0 percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector.

This amount would include ITAC that is assigned as CQ and to the Amendment 80 limited access fishery. To calculate the vessel use cap, NMFS would use the following procedure:

a. Determine the ITAC assigned to the Amendment 80 sector for each Amendment 80 species;

b. Sum the ITACs for each Amendment 80 species to derive a total Amendment 80 sector ITAC for all Amendment 80 species; and

c. Multiply the total Amendment 80 sector ITAC by 20 percent (0.2). This amount would represent the maximum tonnage of all Amendment 80 species that an Amendment 80 vessel could catch.

A vessel owner and operator would be subject to possible enforcement action if a vessel is used to catch more Amendment 80 species in excess of the vessel use cap in any calendar year. The vessel use cap would not apply to the halibut PSC or crab PSC assigned to the Amendment 80 sector or to non-allocated species in the BSAI, such as arrowtooth flounder.

D. Transfer Limitations

1. QS Transfer Limitations

NMFS would not approve transfers of Amendment 80 QS permits if the transfer would cause a person to exceed the 30 percent QS holding cap. If an Amendment 80 QS holder is grandfathered above the QS holding cap, NMFS would not approve any Amendment 80 QS permit transfers to that person unless and until that person's holdings of aggregate Amendment 80 QS in that sector are reduced to an amount below the QS use cap.

If an Amendment 80 QS holder is grandfathered above the 30 percent QS holding cap and transfers an Amendment 80 QS permit to another person, the transferor could not hold more than the greater of either (1) the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of QS held is still greater than the use cap: or (2) the amount equal to the use cap.

2. CQ Transfer Limitations

NMFS would not approve transfers of CQ to a person if it would cause that person to exceed a CQ use cap. Specifically, NMFS would not approve an application to transfer CQ if that transfer application designated a person who is limited by the CQ use cap to receive that CQ. Any person limited by the CQ use cap could not receive any additional CQ unless and until the CQ assigned to that person is below the CQ use cap.

X. Gulf of Alaska (GOA) Sideboard Limits

A. Need for GOA Sideboard Limits

In the development of North Pacific LAPPs, NMFS and the Council have attempted to mitigate potentially adverse effects on non-LAPP fisheries that could be caused by the increased economic and operational efficiencies that LAPPs can provide participants. Specifically, once a harvest privilege is allocated, QS holders may consolidate their operations through cooperative management and use Amendment 80 vessels in other fisheries. This would increase competition and the race for fish in those fisheries. The Program would establish a suite of protection measures, commonly called sideboard limits, for non-Program participants in other federally managed groundfish fisheries.

The Council identified the GOA as the area most likely to be at risk of increased harvest pressures with implementation of the Program. The GOA would likely be subject to increased fishing pressure from Amendment 80 vessels, without sideboards limiting their harvest, because of (1) the harvest patterns of the Amendment 80 sector, (2) the lack of other fisheries in the BSAI that can be targeted by Amendment 80 vessels (i.e, pollock is managed under the AFA, crab is managed under the BSAI Crab Rationalization Program, and Pacific cod is proposed to be allocated to specific sectors under Amendment 85), and (3) the lack of specific gear or sector allocations for many species in the GOA. Therefore, the Program includes sideboard limit protections for the GOA groundfish fisheries.

B. GOA Sideboard Management

1. Overview

Generally, sideboard limits in other LAPPs, such as the Central GOA Rockfish Program, have been managed so that any vessel or license that gave rise to QS, would be subject to a sideboard limit. A linkage between vessel and LLP license prevents a vessel operator from assigning a license, derived from a vessel subject to sideboard limits, to a different vessel in order to circumvent sideboard restrictions. In most North Pacific fisheries, an LLP license with the necessary endorsement is more difficult to obtain than a vessel and limiting the use of LLP licenses is necessary to reduce the risk for an increased race for fish.

The Program would maintain this method for managing sideboard limits. It is important to note that the number of Amendment 80 LLP licenses would be limited to the LLP licenses originally issued for an Amendment 80 vessel as shown in Table 31 to part 679 in the proposed regulatory text, and any LLP licenses named as Amendment 80 LLP licenses in an application for QS. Additionally, an Amendment 80 vessels would be required to use an Amendment 80 LLP while fishing in the BSAI or GOA.

NMFS would apply GOA groundfish sideboard limits to all catch by Amendment 80 vessels in the GOA. Catch of a GOA sideboard species during a directed fishery as well as incidental catch of a GOA sideboarded species, such as Pacific cod caught during a rex sole fishery, would apply against the GOA sideboard limit for that species. In addition, any catch of a GOA sideboard species or halibut PSC used within State waters during the State parallel fishery would apply against the sideboard limit. State parallel fisheries occur in State waters and are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal TAC and federally permitted vessels move between State and Federal waters during the concurrent, or parallel, State and Federal fisheries. The State opens parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries. Accounting for catch in the State parallel fishery ensures that all catch is debited against a sideboard limit whether that harvest occurs in State or Federal waters.

The Program would establish three types of GOA sideboard limits.

- The GOA groundfish sideboard limit would restrict the maximum amount of pollock, Pacific cod, and rockfish that Amendment 80 vessels could harvest. The GOA groundfish sideboard limits would restrict the catch of Amendment 80 vessels to their average aggregate catch from 1998 through 2004.
- The GOA halibut PSC limit, would restrict the maximum amount of halibut PSC that all Amendment 80 vessels could use based on historic halibut PSC use during 1998 through 2004 with some modification for specific conditions.
- The GOA flatfish fishery prohibition, would restrict the number of Amendment 80 vessels and Amendment 80 LLP licenses that could be used to conduct directed fishing for flatfish.

Detailed information about historic catch and halibut PSC use of the

Amendment 80 sector in the GOA and the basis for these sideboard limits is included in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSSES**).

During the development of the Program, the data reviewed by the Council indicated that at least one Amendment 80 vessel had a unique harvest pattern in the GOA, that could warrant specific GOA sideboard measures for Amendment 80 vessels with similar harvest patterns. NMFS has initially identified one Amendment 80 vessel, the F/V GOLDEN FLEECE that met these criteria. The F/V GOLDEN FLEECE, and any other vessel with similar harvest patterns that has not yet been identified through NMFS's data, would be prohibited from directed fishing for GOA pollock, Pacific cod, and rockfish, but would be exempted from the GOA halibut PSC sideboard limit applicable to all other Amendment 80 vessels. NMFS notes that the proposed regulations refer specifically to the F/V GOLDEN FLEECE whose owner has identified his vessel as meeting these criteria. Should other vessels be determined to meet the criteria recommended by the Council for these specific GOA sideboard measures during the proposed rule comment period, NMFS would modify the regulations to accommodate any such vessel. Additionally, references to the F/V GOLDEN FLEECE in this preamble would apply to any similarly situated vessel that may be identified.

C. GOA Groundfish Sideboard Limits

All Amendment 80 vessels, other than the F/V GOLDEN FLEECE, would be collectively limited to catching an amount of groundfish no greater than the limits shown in Table 37 to part 679 in the proposed regulatory text.

NMFS would manage the GOA groundfish sideboard limits in the aggregate for all Amendment 80 vessels. Once a sideboard limit for a groundfish species is reached, or projected to be reached, NMFS would close that fishery to directed fishing by Amendment 80 vessels. Amendment 80 vessels could retain incidental catch of that sideboard species subject to existing maximum retainable amount (MRA) regulations while targeting other groundfish fisheries that are not closed to directed fishing. If the rate of incidental catch of a GOA groundfish sideboard limited species is expected to be high relative to the sideboard limit, NMFS would limit directed fishing for this species by Amendment 80 vessels to accommodate this incidental catch. NMFS would manage the GOA sideboard limits with the goal of keeping all directed and incidental catch of a sideboard species by Amendment 80 vessels below the sideboard limit.

As noted in Table 37 to part 679 in the proposed regulatory text, catch of Central GOA Pacific ocean perch, pelagic shelf rockfish, and northern rockfish is subject to regulation under the Central GOA Rockfish Program. The Central GOA Rockfish Program limits directed fishing in these fisheries to participants qualified under that program. A number of Amendment 80 participants are qualified to participate in the rockfish program, and would be subject to the regulations in effect for that program when fishing. Amendment 80 participants not qualified under the rockfish program would be excluded from conducting directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central GOA.

Under the Program, The F/V GOLDEN FLEECE would be prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish species in the GOA (see Part F of this section below).

D. GOA Halibut PSC Sideboard Limits

The Program would establish halibut PSC sideboard limits in the GOA for Amendment 80 vessels except the F/V GOLDEN FLEECE. NMFS manages halibut PSC limits in the GOA by setting a limit on halibut PSC use for trawl gear through the annual harvest specification process, currently 2,000 mt. NMFS subdivides this amount of halibut PSC by the number of seasons (currently five), and into two species complexes, the shallow-water and the deep-water fishery species complexes NMFS would establish Amendment 80 halibut PSC sideboard limits that are apportioned among seasons and fishery complexes through the annual specification process.

A shallow-water halibut PSC sideboard limit would limit the use of halibut PSC in the shallow-water fishery complex, which includes pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' A deep-water halibut PSC sideboard limit would limit the use of halibut PSC in the deep-water fishery complex which includes all species not in the shallow-water complex: all rockfish species, rex sole, deep-water flatfish, sablefish, and arrowtooth flounder.

The proposed halibut PSC sideboard limits would be based on the historic use of halibut PSC of all Amendment 80 vessels, except the F/V GOLDEN FLEECE in each season, and by fishery complex during the period from 1998 through 2004. The halibut PSC sideboard limits that would be established are slightly lower than historic halibut PSC use by Amendment 80 vessels in the GOA from 1998 through 2004 to accommodate two factors: allocation of halibut PSC CQ under the Central GOA Rockfish Program; and the exemption of the F/V GOLDEN FLEECE from this restriction. Table 10 lists the proposed halibut PSC sideboard limits by fishery complex and season as a percentage of the GOA trawl halibut PSC limit. Table 10 also computes the metric ton amount of the halibut PSC sideboard limit by season based on the current 2,000 mt trawl halibut PSC limit. Because the annual halibut trawl PSC limit is subject to change through the annual harvest specification process, the metric tons displayed in Table 10 are only provided as an example.

TABLE 10.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR USING THE CURRENT 2,000 METRIC TONS OF TRAWL HALIBUT PSC AS AN EXAMPLE

In the . . .	The maximum percentage, and amount in mt, of the total GOA Pacific halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery complex in the GOA and State parallel fishery.	0.48% ..... 9.6 mt	1.89% ..... 37.8 mt	1.46% ..... 29.2 mt	0.74% ..... 14.8 mt	2.27% 45.4 mt

TABLE 10.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR USING THE CURRENT 2,000 METRIC TONS OF TRAWL HALIBUT PSC AS AN EXAMPLE—Continued

In the . . .	The maximum percentage, and amount in mt, of the total GOA Pacific halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Deep-water species fishery complex in the GOA and State parallel fishery.	1.15% ..... 23 mt	10.72% ..... 214.4 mt	5.21% ..... 104.2 mt	0.14% ..... 2.8 mt	3.71% 74.2 mt

Many of the participants in the catcher/processor sector in the Central GOA Rockfish Program would be participants in the Amendment 80 Program. NMFS would need to coordinate catch accounting between the Central GOA Rockfish Program and the Amendment 80 sector to avoid unduly constraining participants in either LAPP. NMFS would coordinate management of the two LAPPs by reducing the third season deep-water halibut PSC sideboard limit under the Program by the amount of halibut PSC that is available for allocation as halibut PSC CQ under the Central GOA Rockfish Program. Deep-water halibut PSC from the third season is specifically assigned to support PSC CQ allocations to the catcher/processor sector under the Central GOA Rockfish Program.

Additionally, NMFS would establish regulations that specify that the use of halibut PSC CQ in the Central GOA Rockfish Program would not be debited from the Amendment 80 halibut PSC sideboard limit. Some of the deep-water halibut PSC in the Central GOA is specifically assigned to support PSC CQ allocations to the catcher/processor sector under the Central GOA Rockfish Program. Much of the halibut PSC that was historically used in the deep-water complex during the third season, which begins on July 1, was used in the Central GOA rockfish fisheries. This adjustment would ensure that a Central GOA Rockfish Program participant fishing under a CQ permit would not be constrained by the GOA sideboard limits established under this Program. Amendment 80 vessels not fishing under a Central GOA Rockfish Program CQ permit would continue to be subject to the halibut PSC sideboard limit proposed under this Program.

The percentages listed in Table 10 also have been modified to remove the historic use of halibut PSC attributed to the F/V GOLDEN FLEECE. The F/V GOLDEN FLEECE would not be subject to the Amendment 80 halibut PSC sideboard limits so the historic halibut PSC used by the F/V GOLDEN FLEECE would not be included in the halibut PSC sideboard limit. As with the GOA groundfish sideboard limits, use of halibut PSC in State parallel fisheries would count against the halibut PSC sideboard limit. NMFS would monitor halibut PSC use by fishery complex and season. If the shallow-water halibut PSC sideboard limit is reached, all directed fishing for all species in the shallow-water complex would be closed in the GOA for that season. Similarly, if the deep-water sideboard limit is met, all directed fishing for all species in the deep-water complex is closed in the GOA for that season. NMFS would reopen a fishery complex in the following season with the halibut PSC sideboard limit applicable for that season.

E. GOA Flatfish Fisheries Prohibition

The Program would limit the number of Amendment 80 vessels and Amendment 80 LLP licenses that could be used for directed fishing in GOA flatfish fisheries. During the development of the Program, the Council and NMFS reviewed historic harvest patterns during the 1998 through 2004 qualifying years. The EA/RIR/IRFA developed for this action clearly indicates that a specific group of Amendment 80 vessels traditionally had been used in GOA flatfish fisheries. Specifically, certain Amendment 80 vessels were clearly active in the GOA flatfish fisheries, with more than 10 weeks of conducting directed fishing in the GOA from 1998 through 2004 as recorded on WPRs, and appeared to be substantially more dependent on those fisheries than other Amendment 80 vessels with more sporadic participation.

The Program would reduce fishing pressure in the GOA by Amendment 80 vessels on non-Amendment 80 sector harvesters with substantial flatfish participation by authorizing only those Amendment 80 vessels: (1) With more than 10 weeks conducting directed fishing for GOA flatfish fisheries during 1998 through 2004; and (2) that are designated on an Amendment 80 LLP license that was originally assigned to one of the Amendment 80 vessels meeting that 10 week minimum requirement to be used to directed fish for flatfish in the GOA. Based on the criteria recommended by the Council and NMFS' WPR records, NMFS would establish a list indicating those Amendment 80 vessels and Amendment 80 LLP licenses that could be used to directed fish for GOA flatfish. Table 11 identifies those Amendment 80 vessels and LLP licenses that meet the proposed criteria. NMFS encourages the public to review this proposed list and provide comments during the public comment period (see DATES) to ensure that the proposed list of Amendment 80 vessels and Amendment 80 LLP licenses eligible to directed fish for GOA flatfish is complete and accurate.

TABLE 11.—AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessels qualified to directed fish for GOA flatfish	Column B: Amendment 80 LLP licenses that must be used on an Amendment 80 vessel listed in Column A to directed fish for GOA flatfish
ALLIANCE	LLG 2905.
AMERICAN NO I	LLG 2028.
DEFENDER	LLG 3217.
GOLDEN FLEECE	LLG 2524.
LEGACY	LLG 3714.
OCEAN ALASKA	LLG 4360.
OCEAN PEACE	LLG 2138.
SEAFREEZE ALASKA.	LLG 4692.
U.S. INTREPID	LLG 3662.
UNIMAK	LLG 3957.
VAERDAL	LLG 1402.

If an Amendment 80 vessel listed in Table 11 is not designated on an Amendment 80 LLP license also listed in Table 11, that vessel would be prohibited from directed fishing in GOA flatfish fisheries. Similarly, if an Amendment 80 vessel not listed in Table 11 is designated on an Amendment 80 LLP license also listed in Table 11, that vessel also would be

prohibited from directed fishing in GOA flatfish fisheries.

F. Provisions for the F/V GOLDEN FLEECE

During the development of the Program, the Council analyzed harvest patterns of Amendment 80 vessels in the GOA. These data identified at least one vessel with historic harvest patterns during the 1998 through 2004 qualifying years that differed substantially from all other Amendment 80 vessels. Specifically, the Council reviewed catch data that identified at least one vessel with catch in GOA flatfish fisheries in far greater proportion to its catch in the BSAI. This Amendment 80 vessel fished in GOA flatfish fisheries for at least 80 percent of all weeks that the vessel was used to fish during the 2000 through 2003 time period. The draft EA/RIR/IRFA describes the unique harvest history of this vessel in greater detail.

The Council recognized that any vessel that met the 2000 through 2003 GOA flatfish harvest criteria described above was an Amendment 80 vessel primarily dependent on GOA flatfish fisheries. To reduce the potentially adverse effects that the proposed GOA halibut PSC sideboard measures could have on the ability of such a vessel to continue fishing in GOA flatfish fisheries, the Council recommended an exemption to the GOA halibut PSC sideboard limits for any Amendment 80 vessel that met these criteria. Based on data currently available, NMFS has identified only one Amendment 80 vessel, the F/V GOLDEN FLEECE, with the distinctive harvest pattern that would qualify that vessel to be granted an exemption from the GOA halibut PSC sideboard limit. NMFS requests that the public provide comment during the public comment period if an Amendment 80 vessel other than the F/V GOLDEN FLEECE shares the same harvest pattern in the GOA flatfish fisheries and should be eligible for a similar exemption.

The Program would accommodate the harvest activities of the F/V GOLDEN FLEECE by prohibiting the F/V GOLDEN FLEECE from directed fishing for Pacific cod, pollock, or in any rockfish fishery in the GOA. However, the F/V GOLDEN FLEECE would not be subject to the GOA halibut PSC sideboard limit. These restrictions would allow the F/V GOLDEN FLEECE to continue fishing as it has historically, while limiting the potential for the vessel to expand its effort into other groundfish fisheries in which it has not traditionally participated.

The exemption to the halibut PSC sideboard limit would only apply if the F/V GOLDEN FLEECE used the LLP license originally issued for the F/V GOLDEN FLEECE (LLP license number LLG 2524). This provision would ensure that only the F/V GOLDEN FLEECE would be exempted from the halibut PSC sideboard limits. Exempting the F/V GOLDEN FLEECE from the halibut PSC limits would not be expected to increase the amount of halibut PSC used by Amendment 80 vessels overall. It is anticipated that the F/V GOLDEN FLEECE would maintain its current fishing patterns, including its halibut PSC use rates, and the overall use of PSC by all Amendment 80 vessels would not be expected to be greater than currently. Exempting the F/V GOLDEN FLEECE from the halibut PSC limits would ensure that the F/V GOLDEN FLEECE would not be adversely affected by other Amendment 80 vessels that could choose to fish in the GOA, use halibut PSC, and potentially, cause the GOA halibut PSC sideboard limit to be reached, thereby limiting the ability of the F/V GOLDEN FLEECE to fully harvest its traditional flatfish fisheries.

Additionally the F/V GOLDEN FLEECE would not be subject to the proposed M&E requirements for other Amendment 80 vessels while fishing in the GOA. Many of the M&E requirements established for Amendment 80 vessels would be necessary to properly track halibut PSC use. This same degree of precision would not be required for the F/V GOLDEN FLEECE. The M&E requirements applicable to the F/V GOLDEN FLEECE are described in Section XII of this preamble.

XI. Example of Allocations Under the Program

To aid the reader, the following is an example of the process NMFS would follow to assign ITAC and PSC to the BSAI trawl limited access and Amendment 80 sectors; to allocate Amendment 80 QS permits; and to issue CQ to Amendment 80 cooperatives and ITAC to the Amendment 80 limited access fishery. This section also provides an example of assigning AFA sideboard limits in the BSAI.

A. Example of Annual TAC and PSC Allocations

The following section provides an example of TAC and PSC allocation to the CDQ Program and Amendment 80 and BSAI trawl limited access sectors. The TAC and PSC used in this example are based on the 2008 TACs and PSC limits established in the 2007 and 2008 final harvest specifications for groundfish of the BSAI (March 2, 2007; 72 FR 9451). The 2008 TACs, PSC limits, and ICA used in this example are subject to future regulatory change through the 2008 and 2009 annual harvest specification process.

For purposes of this example, NMFS has assumed that (1) The regulations allocating Pacific cod to specific sectors, Pacific cod ICA management, and seasonal apportionment of the Pacific cod ITAC to the Amendment 80 sector, would be the same as those described in the proposed rule to implement Amendment 85 to the FMP (February 7, 2007; 72 FR 5654), and (2) the final regulations implementing Amendment 85 would be effective prior to the implementation of the Program.

1. Step 1: Allocate TAC to the CDQ Program

First, NMFS would allocate portions of the 2008 TACs to the CDQ Program according to the procedure described in Section III of this preamble. The allocations of the 2008 TACs to the CDQ Program in this example are the same as the allocations in the 2007 and 2008 final harvest specifications. Table 13 below displays the allocation of TAC to the CDQ Program based on the 2008 TACs.

2. Step 2: Assign ICA and the Atka Mackerel Jig Allocation

For all Amendment 80 species except Pacific cod, NMFS would establish, in the annual harvest specifications, an ICA for use by the BSAI trawl limited access sector and non-trawl fisheries. The ICA amounts specified in this example are subject to change through the annual harvest specification process and may not reflect actual ICA requirements or amounts established in subsequent adjustments to the 2008 TAC or PSC limits during the 2008 and 2009 annual harvest specification process.

NMFS would establish the ICA amounts based on projected incidental catch needs in non-target fisheries. For simplicity, the ICA amounts used in this example are calculated based on a percentage of the TAC after allocation to the CDQ Program. The ICA percentages used in this example were based on a review of incidental catch patterns during 2002 through 2006 by the AFA catcher/processor, AFA catcher vessel, non-AFA catcher vessel trawl, and non-trawl sectors in the BSAI.

In this example, NMFS has considered likely changes in ICA needs with the implementation of the Program. As noted in the draft EA/RIR/IRFA prepared for this proposed action (see **ADDRESSES**), NMFS would set ICA amounts in a precautionary fashion during the first year of implementation

of the Program and review future ICA needs during the annual harvest specification process. As described in Section IV of this preamble, NMFS would not establish an ICA amount for Pacific cod before allocating Pacific cod to the Amendment 80 sector and other trawl sectors.

In this example, the Atka mackerel jig allocation required under existing regulations at § 679.20(a)(8)(i) is assigned before the Atka mackerel ITAC for Area BS/541 is allocated to the Amendment 80 and BSAI trawl limited access sectors. Current regulations allow NMFS to allocate up to two percent of the Atka mackerel TAC in Area BS/541 for harvest by jig gear. Based on historic harvest patterns by jig gear vessels and past recommendations by the Council during previous annual harvest specification processes, NMFS is likely to establish an Atka mackerel jig allocation of less than two percent of the TAC in Area BS/541. This example assumes an allocation for harvest by jig gear of one percent of Area BS/541 TAC after subtraction for allocation to the CDQ Program. This allocation is the same percentage of the Area BS/541 ITAC that is recommended for allocation for jig gear in the 2007 and 2008 final harvest specifications.

Table 13 below displays the projected ICA amounts established for each Amendment 80 species except Pacific cod, and the Atka mackerel jig allocation based on the 2008 TACs.

3. Step 3: Apportion ITAC to the Amendment 80 and BSAI Trawl Limited Access Sector

The ITAC for an Amendment 80 species is the amount of the TAC remaining after subtraction for CDQ allocations, ICA requirements for the BSAI trawl limited access sector and non-trawl fisheries, and the Atka mackerel jig allocation. Table 13 displays the allocation of ITAC for each Amendment 80 species based on the 2008 TACs.

TABLE 13.—PROJECTED ALLOCATION OF TAC, CDQ RESERVES, ICA, ATKA MACKEREL JIG ALLOCATION, AND ITAC USING 2008 HARVEST SPECIFICATIONS

Amendment 80 species and area	2008 TAC (mt)	CDQ (10.7% TAC) (mt)	ICA (% of TAC after CDQ allocation) (mt)	ITAC = TAC − (CDQ & ICA) (mt)
Atka Mackerel BS/541	17,600	1,883	1,257 (8%) + 157 jig set-aside (1%) = 1,402.	(A season = 50% of ITAC) 7,151. (B season = 50% of ITAC) 7,151.
Area 542	22,000	2,354	196 (1%)	(A season = 50% of ITAC) 9,725. (B season = 50% of ITAC) 9,725.
Area 543	15,300	1,637	116 (1%)	(A season = 50% of ITAC) 5,749. (B season = 50% of ITAC) 5,749.
AI POP:				
Area 541	4,900	524	175 (4%)	4,201.
Area 542	5,000	535	45 (1%)	4,420.
Area 543	7,620	815	68 (1%)	6,737.
Pacific cod	127,070	13,596	0	113,474.
Flathead sole	45,000	4,815	3,215 (8%)	36,970.
Rock sole	75,000	8,025	3,349 (5%)	63,626.
Yellowfin sole	150,000	16,050	2,679 (2%)	131,271.

Once ITAC is determined for each Amendment 80 species, NMFS would assign the ITAC to the Amendment 80 and BSAI limited access fishery sectors according to the proportions established in Table 33 and Table 34 to part 679 in the proposed regulatory text.

For this example, NMFS has assumed that the seasonal apportionment of Pacific cod described in the proposed rule for Amendment 85 (February 9, 2007; 72 FR 5654) would be effective in 2008.

The ITAC for Atka mackerel would be allocated for use during specific seasons as specified in § 679.20.

Yellowfin sole ITAC would be assigned to the Amendment 80 sector according to the formula established in Table 34 to part 679 in the proposed regulatory text. The remaining ITAC would be assigned to the BSAI trawl limited access sector. The calculation based on the 2008 TAC and the formula set forth in Table 34 to part 679 in the proposed regulatory text is calculated below:

$$\Sigma\,[(87{,}499 * 0.93) + (94{,}999 - 87{,}500) * 0.875 + (102{,}499 - 95{,}000) * 0.82 + (109{,}999 - 102{,}500) * 0.765 + (117{,}499 - 110{,}000) * 0.71 + (124{,}499 - 117{,}500) * 0.655 + (131{,}271 - 125{,}000) * 0.6] = 113{,}493$$

mt to the Amendment 80 sector.

Table 14 summarizes the amount of ITAC for each Amendment 80 species that would be assigned to the Amendment 80 and BSAI trawl limited access sectors.

TABLE 14.—PROJECTED ITAC ASSIGNED TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Amendment 80 species and management area	2008 ITAC in mt (from Table 13)	Metric tons and % of ITAC assigned to the . . .	
		BSAI trawl limited access sector	Amendment 80 sector
Atka Mackerel	A season = 7,151	143 (2%)	7,008 (98%).
BS/541	B season = 7,151	143 (2%)	7,008 (98%).
Area 542	A season = 9,725	194 (2%)	9,530 (98%).
	B season = 9,725	194 (2%)	9,530 (98%).
Area 543	A season = 5,749	0 (0%)	5,749 (100%)
	B season = 5,749	0 (0%)	5,749 (100%).
AI POP	4,201	210 (5%)	3,991 (95%).
Area 541			

TABLE 14.—PROJECTED ITAC ASSIGNED TO THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

Amendment 80 species and management area	2008 ITAC in mt (from Table 13)	Metric tons and % of ITAC assigned to the . . .	
		BSAI trawl limited access sector	Amendment 80 sector
Area 542	4,420	221 (5%)	4,199 (95%).
Area 543	6,737	135 (2%)	6,602 (98%).
Pacific cod (Allocations and seasons based on Amendment 85).	15,205	N/A N/A	A season = 11,404 (75% of allocation). B season = 3,801 (25% of allocation).
Flathead sole	36,970	0 (0%)	36,970 (100%).
Rock sole	63,626	0 (0%)	63,626 (100%).
Yellowfin sole	131,271	17,778 (13.5%)	113,493 (86.5%).
Total mt of ITAC allocated to the Amendment 80 sector.			288,660.
20% of the total mt of ITAC allocated to the Amendment 80 sector: Amendment 80 vessel use cap.			57,732.

For this example, the total Amendment 80 sector ITAC for all Amendment 80 species is 288,660 mt, and 20 percent of that amount, which is the Amendment 80 vessel use cap, is 57,728 mt.

4. Step 4: Assign Halibut PSC and Crab PSC to the CDQ Program and Between the Sectors

NMFS would allocate a portion of the halibut PSC limit to the CDQ Program according to the criteria described under Section III of this preamble. The remaining amount of the trawl halibut PSC limit set forth in regulations in § 679.21(e) would be assigned to the Amendment 80 and BSAI trawl limited access sector based on Table 35 to part 679 in the proposed regulatory text. For this example, the projected apportionment of halibut PSC for 2008 is described in Table 15.

The crab PSC limit for Zone 1 red king crab, Zone 1 *C. bairdi* crab, Zone 2 *C. bairdi* crab, and *C. opilio* is based on a percentage of the crab abundance estimated for each crab species annually, as set forth in regulations in § 679.21(e). Once the crab PSC limit is established, NMFS would allocate a portion of the annual crab PSC limit as PSQ for the CDQ Program according to the criteria described under Section III of this preamble. The remaining amount of crab PSC limit would be assigned to the Amendment 80 and BSAI trawl limited access sectors according to the PSC allocation percentages listed in Table 35 to part 679 in the proposed regulatory text. For this example, the projected apportionment of crab PSC for 2008 is described in Table 15.

TABLE 15.—PROJECTED APPORTIONMENT OF HALIBUT PSC AND CRAB PSC TO THE CDQ PROGRAM AND AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total trawl PSC allocation (mt)	CDQ PSQ allocation (mt)	PSC remaining after CDQ PSQ allocation (mt)	Amendment 80 sector allocation (mt)	BSAI trawl limited access fishery allocation (mt)
Halibut	n/a	343	n/a	2,525	875
Red king crab	182,225	19,498 (10.7%)	162,727	101,672 (62.48%)	49,761 (30.58%)
C. opilio (COBLZ) PSC limit	4,023,750	430,541 (10.7%)	3,593,209	2,207,667 (61.44%)	1,154,857 (32.14%)
Zone 1 *C. bairdi* crab PSC limit	906,500	96,996 (10.7%)	809,505	426,123 (52.64%)	380,386 (46.99%)
Zone 2 *C. bairdi* crab PSC limit	2,747,250	293,956 (10.7%)	2,453,294	725,930 (29.59%)	1,148,387 (46.81%)

B. Example of Amendment 80 QS Allocations

NMFS has estimated the Amendment 80 QS pools for each Amendment 80 species to describe the allocation of Amendment 80 QS permits. NMFS has also created hypothetical QS permit holders and a cooperative. NMFS notes that the QS allocation to hypothetical persons is not based on specific Amendment 80 sector participants or actual data from specific persons.

1. Step 1: Determine the Total Legal Landings for All Amendment 80 Vessels

Using the official record, NMFS would sum the best five of seven years of legal landings for all Amendment 80 vessels during the 1998 through 2004 qualifying years for each Amendment 80 species. NMFS's estimate of the best five of seven years of legal landings for all Amendment 80 vessels is detailed in Table 16. The legal landings shown in Table 16 are based on total catch data from WPRs for each Amendment 80 species for all known Amendment 80 vessels in metric tons. This estimate may not reflect an actual initial best five of seven years of legal landings for all Amendment 80 vessels due possible changes in the official record that may

occur if the official record is adjusted based on information provided through the application for QS process.

TABLE 16.—ESTIMATED SUM OF THE BEST FIVE OF SEVEN YEARS OF CATCH FROM 1998 THROUGH 2004 FOR EACH AMENDMENT 80 SPECIES BY ALL KNOWN AMENDMENT 80 VESSELS

Amendment 80 species	Total legal landings (the sum of the best five of seven years) for all Amendment 80 vessels (mt)
Atka mackerel	256,438
AI POP	57,882
Pacific cod	155,280
Flathead sole	84,492
Rock sole	169,023
Yellowfin sole	350,173
Sum of all legal landings	1,073,287

2. Step 2: Assign a Percentage of the Total Legal Landings to Each Amendment 80 Vessel

NMFS would determine the best five of seven years of legal landings for each Amendment 80 species for each Amendment 80 vessel and the percentage of the total legal landings for each Amendment 80 species attributed to each Amendment 80 vessel. This estimate assumes that 28 Amendment 80 vessels are qualified to receive QS, and that three Amendment 80 vessels had no legal landings during the qualifying period of 1998 through 2004. NMFS would assign each of the three Amendment 80 vessels without any legal landings 0.5 percent of the flathead sole and yellowfin sole total legal landings, and 0.1 percent of the rock sole total legal landings. All other Amendment 80 vessels would have their aggregate legal landings reduced by 1.5 percent for rock sole and yellowfin sole, and by 0.3 percent for flathead sole to accommodate these three Amendment 80 vessels.

For legal landings from non-mackerel vessels, NMFS would determine the percentage of legal landings of Atka mackerel from 1998 through 2004 in each Atka mackerel management area made by that Amendment 80 vessel.

3. Step 3: Establish the Initial Amendment 80 QS Pools

NMFS would determine the Amendment 80 initial QS pools based on the legal landings verified through the applications for Amendment 80 QS. NMFS would set the Amendment 80 initial QS pool for each Amendment 80 species equal to the sum of the best five of seven years of legal landings assigned to each Amendment 80 vessel in metric tons as of December 31, 2007. Each metric ton of legal landing in NMFS's official record on this date would yield one QS unit.

For this example, NMFS has assumed that all potentially eligible persons applied, NMFS reviewed the applications, provided an opportunity for each applicant to challenge the official record, the official record was not challenged by any applicant, and NMFS did not amend the official record. Therefore, the initial QS pool would be equal to the amount of legal landings from WPRs for all Amendment 80 vessels from 1998 through 2004 as shown in Table 16 above. For this example, the total initial QS units for all Amendment 80 species is 1,073,287 QS units, and 30 percent of that amount, which is the Amendment 80 QS person use cap, is 321,986 QS units.

4. Step 4: Assign Legal Landings to an Amendment 80 Vessel

This example follows four hypothetical qualified applicants; Andy, Jon, Mark, and Mary, who submitted complete applications for Amendment 80 QS by October 15, 2007. Andy and Mark each own one Amendment 80 vessel. Mary owns seven Amendment 80 vessels. Jon holds the LLP license originally issued to an Amendment 80 vessel that sank, therefore the vessel is an actual total loss. Jon also holds a contract from the owner of sunk Amendment 80 vessel stating that he holds the rights to receive any QS that may be derived from the vessel. All of these persons owned their vessels, and held their LLP licenses prior to June 9, 2006 and at the time of application. Therefore, if any of them receive an initial allocation of QS units in excess of the QS use cap, they would be subject to the grand father clause (see Section XI for more detail on use caps).

NMFS would review each person's applications and determine the amount of legal landings and Amendment 80 QS units that would be derived from the Amendment 80 vessels they own, or, in Jon's case, from the Amendment 80 vessel for which he holds the right to receive QS. The percentage of the QS pool that would be assigned to each applicant is based on the legal landings assigned to each Amendment 80 vessel for which they have applied. For each Amendment 80 species, the five of seven years from 1998 through 2004 with the greatest amount of legal landings for each Amendment 80 vessel is divided by the sum of the best five of seven years from 1998 through 2004 for all Amendment 80 vessels (shown in Table 16 of this preamble). For purposes of this example, the flathead sole, rock sole, and yellowfin sole legal landings assigned to the Amendment 80 vessels for which Andy, Jon, Mark, and Mary have applied are assumed to have been adjusted to account for the three Amendment 80 vessels without any legal landings (see Section VI of this preamble for more detail on this adjustment process).

At this time, NMFS would also determine if any of the Amendment 80 vessels for which Andy, Jon, Mark, or Mary have applied would qualify as non-mackerel vessels. For this example, the Amendment 80 vessels for which Andy, Jon, and Mary have applied are assumed to be mackerel vessels. Mark is assumed to own a non-mackerel vessel—an Amendment 80 vessel less than 200 ft (61 m) LOA that made less than two percent of the total Atka mackerel legal landings. Under this example, all of the Atka mackerel legal landings assigned to Mark's Amendment 80 vessel (1.0 percent of the total Atka mackerel legal landings in this example) would be assumed to be derived from Area BS/541. Mark would receive non-mackerel QS designated for Area BS/541 based on these legal landings.

This example assumes that 6.0 percent of the total Atka mackerel legal landings would be assigned to non-mackerel vessels, of which 4.6 percent would be assigned to Area BS/541, 1.2 percent to Area 542, and the remaining 0.2 percent to Area 543. This estimate of the amount of legal landings assigned to non-mackerel vessels in each management area is consistent with the estimate provided in the draft EA/RIR/IRFA prepared for this action and on NMFS's WPR records.

Once the percentage of the sum of the best five of seven years of legal landings for each Amendment 80 species for each Amendment 80 vessel for which Andy, Jon, Mark, and Mary have applied is known, that amount is multiplied by the initial QS pool. The percentage of the Amendment 80 initial QS pool for each Amendment 80 species and the total amount of Amendment 80 QS units that would be assigned to Andy, Jon, Mark, and Mary is shown in Table 17 of this preamble.

5. Step 5: Assign Amendment 80 QS Permits

NMFS would assign an Amendment 80 QS permit to each person who submits a timely and complete application by October 15. The Amendment 80 QS permit would designate the number of QS units for each Amendment 80 species. Andy, Mark, and Mary would be issued an

Amendment 80 QS permit for each Amendment 80 vessel they own. Jon would be issued an Amendment 80 QS permit that is permanently affixed to the LLP license originally assigned to the Amendment 80 vessel that sank. Jon holds an LLP license was originally assigned to an Amendment 80 vessel with legal landings, Jon submitted a timely and complete application to receive QS based on those legal landings, and Jon holds a contract to receive QS derived from those legal landings. Therefore, Jon's LLP license would be reissued as an Amendment 80 LLP/QS license.

C. Example of Allocations to an Amendment 80 Cooperative and the Amendment 80 Limited Access Fishery

1. Step 1: Form a Cooperative

In this example, Andy, Jon, Mark, and Mary form a corporation for a harvesting cooperative—Cooperative X, establish a membership agreement, and designate an individual to serve as the representative who is responsible for acting on behalf of the cooperative. The representative of Cooperative X submitted a complete application for CQ by November 1, 2007. For simplicity, this example assumes that only one Amendment 80 cooperative (Cooperative X) has formed in the Amendment 80 sector. Any ITAC or PSC allocated to the Amendment 80 sector and not assigned to Cooperative X would be assigned to the Amendment 80 limited access fishery.

Andy, Jon, Mark, and Mary are not linked through a 10 percent or greater common ownership or control. All of the Amendment 80 QS permits, Amendment 80 vessels, and Amendment 80 LLP licenses they hold are assigned to Cooperative X. Andy, Jon, and Mark each hold one Amendment 80 permit. Mary holds seven Amendment 80 QS permits. A total of 10 Amendment 80 QS permits are assigned to the cooperative. This example assumes that no other sanctions or limits would prevent these four people from forming a cooperative.

2. Approve the Application for CQ

NMFS would approve the application for CQ for Cooperative X because it meets the requirements of being a registered corporation with a designated representative, it is comprised of a minimum of three unique members, and more than the minimum of nine Amendment 80 QS permits have been assigned to Cooperative X. Table 17 displays the amount of QS units assigned to each member of Cooperative X, and the total amount of QS units assigned to the cooperative.

Table. 17. Amendment 80 QS issued to Andy, Jon, Mark, and Mary and assigned to Cooperative X.

Amendment 80 Species	Andy	Jon	Mark	Mary	Cooperative X
	Vessel A QS units and (% of QS pool)	Vessel B QS units and (% of QS pool)	Vessel C QS units and (% of QS pool)	Vessels D—I QS units and (% of QS pool)	Total QS units and (% of QS pool) assigned to Cooperative X
Atka mackerel	12,822 (5%)	12,822 (5%)	2,560 (1%)	64,110 (25%)	92,318. 36% of QS pool.
AI POP	2,894 (5%)	579 (1%)	289 (0.5%)	14,760 (25.5%)	18,522. 37% of QS pool.
Pacific cod	3,882 (2.5%)	8,540 (5.5%)	11,646 (7.5%)	44,255 (28.5%)	68,323. 44% of QS pool.
Flathead sole	845 (1%)	3,380 (4%)	2,535 (3%)	31,262 (37%)	38,021. 45% of QS pool.
Rock sole	5,071 (3%)	8,451 (5%)	8,451 (5%)	64,229 (38%)	86,202. 51% of QS pool.
Yellowfin sole	14,007 (4%)	17,509 (5%)	17,50 (5%)	175,087 (50%)	224,111. 64% of QS pool.
Total QS units (% of QS pool)	39,521 3.68%	51,281 4.78%	42,994 4.00%	393,701 36.68%	527,497. 49.15% of total aggregate QS units.

Note that in this example, Mary has been allocated Amendment 80 QS permits with a sum of Amendment 80 QS units that is greater than 30 percent of the aggregate Amendment 80 initial QS pool. The use cap is 321,986 QS units (see Step 3 above for additional detail). NMFS would initially issue Mary more QS units than the QS unit cap because she is subject to the grandfather clause. Mary would not be eligible to receive any additional Amendment 80 QS permits by transfer unless and until she transfers a QS permit, or several QS permits, until she holds an amount of QS units on all of her QS permits that is less than 30 percent of the aggregate QS pool. (See Section IX of this preamble for more detail on use caps).

Cooperative X would receive a specific amount of the Amendment 80 ITAC as CQ for each Amendment 80 species based on the proportion of the aggregate Amendment 80 QS pool assigned to the cooperative.

3. Step 3: Assign Atka Mackerel CQ to Cooperative X

NMFS would need to calculate the allocation of Atka mackerel ITAC to non-mackerel QS holders first and then apportion the remaining amount of the ITAC to mackerel QS holders. For each management area, the Atka mackerel ITAC assigned to non-mackerel QS holders would be determined using the following formula:

Non-mackerel ITAC in a management area = (Non-mackerel QS designated for that management area / Total mackerel and non-mackerel QS pool) x Amendment 80 sector ITAC in all management areas.

Based on the assumed distribution of non-mackerel QS as a percentage of total non-mackerel and mackerel QS described in Step 4 in Part B of this section, and the amount of ITAC in each Atka mackerel management area described in Table 14 above, the result from this formula for this example is shown in Table 18.

TABLE 18.—EXAMPLE OF NON-MACKEREL ITAC ASSIGNED TO EACH MANAGEMENT AREA

Area	Column A Non-mackerel QS in an Area (% of total QS pool)	Column B Total ITAC (mackerel and non-mackerel) in all areas	Column C Non-mackerel ITAC in that area = (Column A × Column B)
BS/541	4.6 %	A season = 22,625 mt	BS/541 A season = 1,041 mt. BS/541 B season = 1,041 mt.
542	1.2 %		542 A season = 271 mt. 542 B season = 271 mt.
543	0.2 %	B season = 22,625 mt	543 A season = 45 mt. 543 B season = 45 mt.

Mark holds Atka mackerel QS derived from a non-mackerel vessel that yielded 1 percent of the total Atka mackerel QS pool. All of Mark's QS units are assigned to Area BS/541. The amount of Area BS/541 CQ derived from Mark's non-mackerel QS and assigned to the cooperative as Area BS/541 CQ is shown in the following formula:

Non-mackerel CQ assigned to that cooperative = (Non-mackerel QS designated for that management area assigned to that Amendment 80 cooperative / Non-mackerel QS pool in that management area) × Non-mackerel ITAC for that management area.

In this example, 21.7 percent of the non-mackerel QS pool in Area BS/541 is assigned to Mark. The percent of the non-mackerel QS pool assigned to the cooperative is equal to one percent of Area BS/541 total QS pool, divided by 4.6 percent, which is the non-mackerel QS pool in management Area BS/541. This would result in 21.7 percent of the A and B season non-mackerel ITAC (1,041 mt × 21.7 percent = 226 mt per season) in Area BS/541 being assigned to Cooperative X as Area BS/541 Atka mackerel CQ based on Mark's non-mackerel QS holdings. Under this example, the remaining non-mackerel ITAC in Areas BS/541, Area 542, and Area 543 would be assigned to the Amendment 80 limited access fishery. The total amount of Area 541/BS ITAC assigned to the Amendment 80 limited access fishery from non-mackerel vessels is shown in the following equation:

Non-mackerel ITAC assigned to the Amendment 80 limited access fishery in a management area = Non-mackerel ITAC in a management area—Σ of non-mackerel CQ assigned to all Amendment 80 cooperatives in that management area.

After deducting the non-mackerel ITAC in Areas BS/541, 542, and 543 the remaining ITAC, the mackerel ITAC, would be assigned to mackerel QS holders in the cooperative (Andy, Jon, and Mary) in proportion to the mackerel QS assigned to the cooperative. The mackerel ITAC from all three management areas would be equally apportioned among these mackerel QS holders based on their percentage of the mackerel QS pool. The amount of Area BS/541, Area 542, and Area 543 mackerel ITAC assigned to the cooperative is computed using the following equation:

Mackerel CQ in a management area = (Amendment 80 sector ITAC in a management area—Non-mackerel ITAC in a management area) × (Mackerel QS units assigned to that cooperative / Mackerel QS pool).

For simplicity, the percentage of the total mackerel QS pool in each area can be shown as a percentage of the total QS pool (i.e, the combined mackerel and non-mackerel QS pools). In this example, the mackerel QS pool comprises 94 percent of the total Atka mackerel QS pool, and the non-mackerel QS pool comprises 6 percent of the total Atka mackerel QS pool. Therefore, if cooperative X is assigned 35 percent of the mackerel QS pool, and the mackerel QS pool is equal to 94 percent of the combined mackerel and non-mackerel QS pool, dividing 35 percent by 94 percent equals 37.2 percent, which is the percent of the mackerel QS pool assigned to Cooperative X. The following Table 19 shows the results of this calculation. In addition, Table 19 shows the total CQ assigned to Cooperative X that would be derived from mackerel Qs held by Andy, Jon, and Mary, and non-mackerel QS held by Mark.

TABLE 19.—EXAMPLE OF ATKA MACKEREL CQ ASSIGNED TO COOPERATIVE X

Area	Column A = Mackerel ITAC in an area	Column B = Percentage of mackerel QS assigned to the cooperative	Atka mackerel CQ = Non-mackerel CQ (Column A x Column B) + mackerel CQ from Mark in Area BS/541
BS/541	A and B seasons = 5,967 mt (7,008 mt—1,041 mt).	37.2% (35% of total QS pool / 94%)	A season = 2,448 mt (2,222 mt + 226 mt from Mark). B season = 2,448 mt (2,222 mt + 226 mt from Mark).
542	A and B seasons = 9,259 mt (9,530 mt—271 mt).	37.2% (35% of total QS pool / 94%)	A season = 3,447 mt. B season = 3,447 mt.
543	A and B seasons = 5,703 mt (5,749 mt—45 mt).	37.2% (35% of total QS pool / 94%)	A season = 2,124 mt. B season = 2,124 mt.

4. Step 4: Assign Atka Mackerel ITAC to the Amendment 80 Limited Access Fishery

After allocating Atka mackerel CQ to all cooperatives (there is only one cooperative, Cooperative X, in this example), the remaining Atka mackerel ITAC in each area, both the non-mackerel and mackerel ITAC would be allocated to the Amendment 80 limited access fisheries. Table 20 shows the amount of Atka mackerel ITAC assigned to the Amendment 80 limited access fishery.

TABLE 20.—TOTAL ATKA MACKEREL ITAC ASSIGNED TO THE AMENDMENT 80 LIMITED ACCESS FISHERY

Area and season	Column A Amendment 80 ITAC (mt)	Column B CQ assigned to Cooperative X (mt)	Column C ITAC for Amendment 80 limited access fishery (mt) (Column A—Column B)
BS/541 A season	7,008	2,448	4,560
B season	7,008	2,448	4,560
542 A season	9,530	3,447	6,083
B season	9,530	3,447	6,083
543 A season	5,749	2,124	2,124
B season	5,749	2,124	2,124

5. Step 5: Assign CQ to Cooperative X and ITAC to the Amendment 80 Limited Access Fishery (All Amendment 80 Species Except Atka Mackerel)

NMFS would assign CQ for each Amendment 80 species, except Atka mackerel, to Cooperative X based on the percentage of that Amendment 80 species QS pool assigned to Cooperative X multiplied by the Amendment 80 sector ITAC. The Amendment 80 ITAC for AI POP in Areas 541, 542, and 543, would be assigned to the cooperative based on the percentage of that AI POP QS pool assigned to the cooperative (shown in Table 17 of this preamble). The ITAC for Pacific cod would be assigned to the cooperative based on the percentage of the Pacific cod QS pool held by the cooperative and assigned on a seasonal basis. Flathead sole, rock sole, and yellowfin sole would be assigned to the cooperative based on the percentage of the Amendment 80 QS held by the cooperative for those species. These three species are not currently subject to seasonal apportionment. The allocation of CQ to cooperative X is shown in Table 21.

TABLE 21.—CQ ASSIGNED TO COOPERATIVE X AND THE AMENDMENT 80 LIMITED ACCESS FISHERY ITAC FOR ALL AMENDMENT 80 SPECIES, EXCEPT ATKA MACKEREL

Amendment 80 species	Amendment 80 Sector ITAC (mt)	CQ assigned to Cooperative X (mt) and (% of Amendment 80 ITAC)	Amendment 80 limited access fishery ITAC (mt) and (% of Amendment 80 ITAC)
AI POP Area 541	3,971	1,477 (37 %)	2,514 (63%).
Area 542	4,194	1,554 (37%)	2,646 (63%).
Area 543	6,594	2,443 (37%)	4,159 (63%).
Pacific cod	A season = 11,404	5,017 (44%)	6,387 (56%) .
	B season = 3,802	1,673 (44%)	2,129 (56%).
Flathead sole	36,970	16,637 (45%)	20,334 (55%).
Rock sole	63,626	32,449 (51%)	31,177 (49%).
Yellowfin sole	113,493	72,635 (64%)	40,857 (36%).

6. Step 6: Attribute PSC to Each Amendment 80 Species

NMFS would attribute the Amendment 80 sector halibut and crab PSC to each Amendment 80 species for purposes of determining how much halibut and crab PSC would be assigned to an Amendment 80 cooperative and the Amendment 80 limited access sector. The process for assigning an amount of halibut and crab PSC has been apportioned to the CDQ Program, Amendment 80 sector, and BSAI trawl limited access sector is described in Section IV of this preamble. The results of that process are shown in Table 15 of this preamble. The amount of the Amendment 80 sector halibut and crab PSC that is attributed to each Amendment 80 species, based on historic use of that PSC species by the Amendment 80 sector, is shown in Table 22.

TABLE 22.—PERCENTAGE OF PSC LIMIT ATTRIBUTED TO EACH AMENDMENT 80 QS SPECIES

For the following PSC species and Amendment 80 sector allocation . . .	The amount (and percentage) of the Amendment 80 sector PSC limit attributed to each Amendment 80 QS species is . . .					
	Atka mackerel	AI POP	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Row 1: Halibut 2,575 mt	102 mt (3.96%)	48 mt (1.87%)	638 mt (24.79%)	347 mt (13.47%)	623 mt (24.19%)	817 mt. (31.72%).
Row 2: Red king crab Zone 1 101,672 animals.	142 (0.14%)	569 (0.56%)	6,995 (6.88%)	448 (0.48%)	62,823 (61.79 %)	30,664. (30.16%).

TABLE 22.—PERCENTAGE OF PSC LIMIT ATTRIBUTED TO EACH AMENDMENT 80 QS SPECIES—Continued

For the following PSC species and Amendment 80 sector allocation . . .	The amount (and percentage) of the Amendment 80 sector PSC limit attributed to each Amendment 80 QS species is . . .					
	Atka mackerel	AI POP	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Row 3: *C. opilio* crab (COBLZ) 2,207,667 animals.	0 (0%)	1325 (0.06%)	138,642 (6.28%)	395,393 (17.91%)	217,234 (9.84%)	1,455,074. (65.91%).
Row 4: Zone 1 *C. bairdi* crab 426,123 animals.	0 (0%)	0 (0%)	72,484 (17.01%)	13,338 (3.13%)	239,268 (56.15%)	101,034. (23.71%).
Row 5: Zone 2 *C. bairdi* crab 725,930 animals.	73 (0.01%)	218 (0.03%)	57,494 (7.92%)	270,844 (37.31%)	51,033 (7.03%)	346,269. (47.70%).
Row 6: % of Amendment 80 QS assigned to Cooperative X.	36%	37%	44%	45%	51%	64%.

7. Step 7: Assign PSC to the Cooperative

NMFS would assign halibut and crab PSC to the cooperative in proportion to the amount of Amendment 80 QS held by the cooperative. The steps in this process include (1) multiplying the amount of PSC attributed to each Amendment 80 QS species as shown in Table 22 by the percentage of the Amendment 80 QS assigned to Cooperative X for that Amendment 80 species (i.e., For each PSC species, multiply the amount of PSC listed in Rows 1 through 5 by the percentage of the Amendment 80 QS assigned to Cooperative X in Row 6); and (2) summing the amount of PSC derived from all Amendment 80 species. The result of these calculations is the total PSC assigned to Cooperative X and is described in Table 23.

TABLE 23.—CRAB AND HALIBUT PSC ASSIGNED TO COOPERATIVE X

PSC species	Allocation to Cooperative X
Row 1: Halibut	1,332 mt PSC CQ.
Row 2: Red king crab Zone 1	55,224 animals.
Row 3: *C. opilio* crab (COBLZ)	1,281,456 animals.
Row 4: Zone 1 *C. bairdi* crab	224,583 animals.
Row 5: Zone 2 *C. bairdi* crab	394,922 animals.

NMFS notes that these amounts of PSC CQ would be used by Cooperative X while fishing for all groundfish in the BSAI. This would include Amendment 80 species and other non-pollock groundfish, if there is available TAC (e.g., Greenland turbot).

NMFS would assign the amount of Amendment 80 halibut and crab PSC that remains after allocation to Cooperative X to the Amendment 80 limited access fishery. NMFS would further apportion the PSC assigned to the Amendment 80 limited access fishery by season and fishery according to the annual harvest specification process. PSC apportioned to the Amendment 80 limited access fishery would be managed by NMFS inseason staff. The seasonal and fishery specific apportionment of halibut and crab PSC for the Amendment 80 limited access fishery cannot be predicted at this time because that process is dependent on input from the regulated industry. Therefore, this example does not describe the seasonal or fishery apportionment of PSC to the Amendment 80 limited access fishery.

8. Step 8: Begin Fishing

The members of Cooperative X could fish under its CQ permit beginning January 20, 2008. Cooperative X, would have to ensure that their vessels did not exceed the Amendment 80 vessel use cap of 57,732 mt of Amendment 80 species while catching their CQ. Any Amendment 80 vessels used by the cooperative members would need to meet all of the M&E requirements detailed in Section XII of this preamble. Effective with the 2009 fishing year, each cooperative member would have to submit a timely and complete EDR for the cooperative to receive any CQ derived from the QS permits held by those members (see Section XIII of this preamble for more detail).

D. Example of AFA Sideboard Limits

1. AFA Groundfish Sideboard Limits

The AFA sideboard limits for Amendment 80 species would be calculated based on the amount of TAC remaining after the deduction of 10.7 percent of the TAC for the CDQ Program, but prior to the designation of the ICA. This amount of the TAC is then multiplied by the AFA catcher/processor sideboard ratio and the AFA catcher vessel sideboard ratio established in regulation in § 679.64. The result of this calculation is the AFA groundfish sideboard limit for that Amendment 80 species for that AFA sector. For example, the AFA catcher/processor rock sole sideboard limit would be 2,478 mt: ((75,000 mt TAC − 8,025 mt CDQ Program allocation) × AFA catcher/processor sideboard ratio of 0.037 = 2,478 mt). This calculation method would be used for establishing the AFA catcher/processor and AFA catcher vessel sideboard limits for all Amendment 80 species, except Atka mackerel for the AFA catcher/processor sector, and Pacific cod for the AFA catcher/processor and AFA catcher vessel sectors.

Section V of this preamble notes that the BSAI Atka mackerel sideboard limit for AFA catcher/processors is not modified by the Program and would not be calculated using this method. Section IV of this preamble notes that the Program would not alter the existing method for calculating Pacific cod AFA sideboard limits. The proposed rule for Amendment 85 proposes to remove Pacific cod sideboard limits for the AFA catcher/processors (February 7, 2007; 72 FR 5654). Under this example, NMFS has assumed that a final rule implementing Amendment 85 as proposed has been published and Pacific cod AFA catcher/processor sideboards would not apply.

This example also assumes that pending a final rule implementing Amendment 85, NMFS would calculate the AFA catcher vessel sideboards based on current regulations in § 679.64(b)(3)(ii). These regulations require NMFS to calculate the AFA catcher vessel sideboard limit for Pacific cod by multiplying the AFA catcher vessel Pacific cod sideboard ratio (i.e., 0.8609 based on calculations previously conducted) by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

The amount of BSAI Pacific cod available to catcher vessels could be derived by reviewing the allocation of BSAI Pacific cod approved by the Secretary under Amendment 85 and described in Table 8 in this preamble. Table 8 displays the allocation of TAC among various fishery sectors. Exclusive allocations made for the CDQ Program would not be considered as available to catcher vessels because CDQ Program allocations are exclusive to specific vessels and are not accessible to catcher vessels generally. Based on the allocations detailed in Table 8, 65.9 percent of the BSAI Pacific cod TAC after allocation to the CDQ Program is assigned to catcher/processors (e.g., Amendment 80 sector, pot catcher/processors, etc.), the remaining 34.1 percent of the BSAI Pacific cod TAC may be harvested by catcher vessels (trawl catcher vessels, pot catcher vessels, etc.). Using the 2008 BSAI Pacific cod TAC, the AFA catcher vessel Pacific cod sideboard limit as proposed under Amendment 85 would be 38,695 mt (From Table 13: 113,474 mt of BSAI Pacific cod TAC remains after allocation to the CDQ Program × 34.1 percent = 38,695 mt). This example, assumes that the AFA catcher vessel sideboard limit for Pacific cod in the Program would be the same as that proposed under Amendment 85.

Additionally, under this example, the yellowfin sole ITAC in 2008 would be greater than 125,000 mt. As noted in Section V of the preamble, at that yellowfin sole ITAC level, NMFS would not apply AFA sideboard limits for yellowfin sole. Tables 24 and 25 summarize the AFA groundfish sideboard limits in 2008 for Amendment 80 species based on the assumptions presented here. AFA sideboard limits for Atka mackerel and Pacific cod may be apportioned by season during the annual harvest specification process. For simplicity, Tables 24 and 25 do not apportion the AFA sideboard limits for Atka mackerel or Pacific cod by season. Presumably, the AFA sideboard limits for Atka mackerel and Pacific cod would continue to be apportioned by season. AFA sideboard limits that apply to non-Amendment 80 groundfish species would continue to be calculated under existing regulations. Non-Amendment 80 groundfish species AFA sideboard limits are not displayed in Tables 24 and 25.

TABLE 24.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI

Species or species group	TAC available for AFA catcher/processor sideboards (mt)	AFA catcher/processor sideboard ratio	2008 AFA catcher/processor sideboard limit (mt)
AI POP:			
Area 541	4,376	0.020	88
Area 542	4,465	0.001	4
Area 543	6,805	0.004	27
Flathead sole	40,185	0.036	1,447
Rock sole	66,975	0.037	2,478
Yellowfin sole	133,950	0.230	N/A (See above)
Atka mackerel	Sideboard limits subject to further seasonal apportionment		
Area BS/541	17,600	0	0
Area 542	22,000	0.115	2,530
Area 543	15,300	0.200	3,060
Pacific cod	Sideboard limits subject to further seasonal apportionment		
BSAI	N/A	N/A	N/A (Proposed under Amendment 85).

TABLE 25.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI

Species or species group	TAC available for AFA catcher vessel sideboards	AFA catcher vessel sideboard ratio	2008 AFA catcher vessel sideboard limit (mt)
AI POP:			
Area 541	4,376	0.0077	34
Area 542	4,465	0.0025	11
Area 543	6,805	0	0
Flathead sole(BS trawl gear)	40,185	0.036	2,029
Rock sole	66,975	0.0341	2,284

TABLE 25.—PROJECTED AFA CATCHER/PROCESSOR SIDEBOARD LIMITS IN THE BSAI—Continued

Species or species group	TAC available for AFA catcher vessel sideboards	AFA catcher vessel sideboard ratio	2008 AFA catcher vessel sideboard limit (mt)
Yellowfin sole	133,950	0.0647	N/A (See above).
Atka mackerel	Sideboard limits subject to further seasonal apportionment		
Area BS/541	15,717	0.0032	50
Area 542	19,646	0.0001	2
Area 543	13,663	0	0
Pacific cod (BSAI trawl gear)	Sideboard limits subject to further seasonal apportionment		
	38,695	0.8609	33.313

2. AFA Halibut PSC Sideboard Limits

AFA halibut PSC limits would be fixed in regulation as listed in Table 40 to part 679 in the proposed regulatory text. During the annual harvest specification process, the Council could recommend assigning halibut PSC by season (e.g., halibut PSC in the yellowfin sole fishery), if that is deemed necessary.

3. AFA Crab PSC Sideboard Limits

AFA crab sideboard limits would be based on the AFA ratios as listed in Table 41 to part 679 in the proposed regulatory text multiplied by the amounts of crab PSC listed under the ''PSC remaining after CDQ PSQ allocation'' column in Table 15 of this preamble. The result of that calculation is shown in Table 26 below.

TABLE 26.—PROJECTED AFA CRAB PSC SIDEBOARD LIMITS

[in numbers of animals]

For the following crab species in the following areas . . .	The AFA catcher/processor crab PSC sideboard limit is . . .	The AFA catcher vessel crab PSC sideboard limit is . . .
Red king crab Zone 1	1,140	48,660
C. opilio crab (COBLZ)	549,760	603,660
Zone 1 *C. bairdi* crab	113,330	267,140
Zone 2 *C. bairdi* crab	122,670	455,31

XII. Monitoring and Enforcement (M&E)

As is the case for any LAPP, NMFS must be able to monitor the use of all CQ, catch relative to GOA sideboard limits, and use caps. The primary tools for monitoring the Program would include the following: (1) The use of observers aboard vessels; (2) weighing all catch on NMFS approved scales; and (3) specified procedures when handling catch prior to processing. For purposes of this section, Amendment 80 vessels are referred to as non-AFA trawl catcher/processors when referring to M&E provisions applicable in the BSAI. The term ''non-AFA trawl catcher/processor'' includes all Amendment 80 vessels, and any non-AFA trawl catcher/processors that may enter the fishery, such as those that could be used by CDQ groups to harvest Amendment 80 species. In addition to the requirements listed above, all non-AFA trawl catcher/processors would continue to be subject to existing vessel monitoring system (VMS) requirements described in § 679.28(f).

A. Observers

Observers would be required aboard vessels to adequately account for catch and bycatch in the fishery. Observer coverage would increase from existing coverage levels in most cases to ensure that catch accounting is adequate for a quota based fishery. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations and GOA sideboard limits. Adequate observer coverage would be essential to monitor halibut PSC rates in the fishery and ensure that a cooperative does not exceed its halibut PSC CQ allocation. Observer coverage also would be essential for monitoring the use of CQ by the Amendment 80 cooperatives, the amount of ITAC caught and PSC used in Amendment 80 limited access fishery, and to monitor GOA sideboard limits applicable to Amendment 80 vessels.

Observer coverage would be increased from existing requirements on all non-AFA trawl catcher/processors while fishing under a CQ permit for a cooperative, in the Amendment 80 limited access fishery, for the CDQ Program, or when subject to GOA sideboard limits. Observer coverage requirements were discussed and reviewed during the development of the Program, and are described in the EA/RIR/IRFA analysis prepared to support this action (see **ADDRESSES** for more information). Generally, the level and type of observer coverage required under this Program follows models that have been developed for monitoring catcher/processor vessels under the Central GOA Rockfish Program (see § 679.84 for additional detail). Vessels would be required to fish in a manner such that observer workload restrictions are not exceeded.

Additionally, NMFS proposes to revise regulations at § 679.50(a) to clarify observer coverage levels for individual management programs. Generally, observer coverage regulations for individual programs are outlined in § 679.50(c) and (d). As management programs which require additional or separate observer coverage are implemented, regulations governing observer coverage for each of these programs have been added to these sections. To assist the various program participants in finding the appropriate observer coverage, NMFS proposes to add a table to the introductory text of § 679.50 that provides the location of observer coverage regulations for each management program. Vessel owners and operators should note that if a vessel is subject to M&E requirements for more than one LAPP, (e.g., an Amendment 80 vessel is subject to observer requirements under the Central GOA Rockfish Program and the Program), the most restrictive observer coverage and M&E requirements would apply to that vessel.

1. Observer Coverage for All Non-AFA Catcher/Processors Fishing in the BSAI

Observer coverage would differ in Amendment 80 cooperatives from the existing requirements for several reasons. As noted above, increased observer coverage is necessary to account for CQ. All catch of Amendment 80 species, and use of halibut and crab PSC in the BSAI must be debited from an Amendment 80 cooperative's CQ account. Additionally, the Program would provide exclusive harvest privileges for a multiple species fishery where catches generally consist of heterogeneously mixed Amendment 80 species and non-quota species or species groups (e.g., arrowtooth flounder) in the same haul. Under the Program, vessels engaged in fishing for Amendment 80 species may alter their fishing behavior to maximize their non-quota species (e.g., arrowtooth flounder). As the relative TACs and economic value of various groundfish targets change, the value of these non-allocated species could become significant. This could increase the harvest of non-allocated species and the halibut PSC CQ incidentally used during the harvest of non-allocated species.

Because of the magnitude of hauls, diversity of species, and range of vessel characteristics, catch accounting would depend on species composition that is derived from observer samples. NMFS currently bases its calculation of species composition, including halibut and crab PSC, for catcher/processor vessels on basket samples of approximately 300 kg (approximately 660 lb) or less, depending on the time and space available to the observer. Catch composition data are extrapolated (the term commonly used is ''expanded'') to determine species composition, and PSC use for the entire haul. The sampled hauls are expanded to determine the quantity of a given groundfish species and PSC that would be attributed to the unsampled hauls during a trip. NMFS then calculates the species composition and PSC catch rate from the sampled hauls for each directed fishery. These species composition estimates and PSC catch rates are then applied to all unobserved catch to determine total species composition and PSC use. The degree to which a given quantity of groundfish or PSC in a sample is expanded varies enormously depending on the fraction of total observed hauls and the fraction of sampled catch in each of the observed hauls. Increasing observer coverage so that most hauls are observed would decrease the proportion of unobserved hauls and the need to expand observer sample estimates.

Additionally, unobserved vessels may have a strong incentive to under-report PSC. PSC may not be retained by the vessel and thus has no economic value. However, it is quite possible that the lack of sufficient PSC, specifically halibut PSC, could limit the amount of allocated species harvested by Program participants and under-reported halibut PSC could potentially allow the under-reporting vessel or Amendment 80 cooperative to harvest a larger amount of target species. This is particularly true for vessels in Amendment 80 cooperatives because this Program would allocate a share of available halibut PSC to the cooperatives as CQ. Lack of sufficient halibut PSC CQ could limit the ability of Amendment 80 cooperatives to fully harvest their CQ for Amendment 80 and non-Amendment 80 species, (e.g., Greenland turbot), that may be constrained by amount of PSC CQ held by the cooperative. This could create an incentive to under report PSC CQ. This incentive increases the need for monitoring catch composition.

To ensure adequate observation and sampling of hauls for species composition and PSC use, observer coverage for Amendment 80 vessels fishing for Amendment 80 cooperatives would be similar to requirements for catcher/processor vessels fishing under a CQ permit under the Central GOA Rockfish Program. The specific level of observer coverage required for catcher/processor vessels is detailed in Table 27.

Observer coverage requirements in the limited access fishery would be the same as those for vessels assigned to cooperatives. Observer coverage required for non-AFA trawl catcher/processors participating in limited access fisheries is detailed in Table 27. NMFS would require observer coverage adequate to ensure proper management of the TAC and PSC. This would be particularly critical in the limited access fisheries because the TAC assigned is likely to be small and could be prosecuted by relatively few vessels. Limited observer coverage could reduce the ability of NMFS to close fisheries in a timely manner, thereby increasing the potential for Amendment 80 vessels to catch more than the ITAC of Amendment 80 species, or PSC assigned to the Amendment 80 limited access sector. Should Amendment 80 vessels exceed the ITAC assigned to the Amendment 80 limited access fishery, NMFS could be required to limit harvest opportunities in other fisheries, including Amendment 80 cooperatives, should the excess catch approach the overfishing level (OFL) for a given species. Increased observer coverage requirements would reduce that risk by providing more timely and complete data.

Observer coverage requirements in the CDQ fishery would be the same as those for vessels assigned to cooperatives. Vessels fishing in the CDQ fishery are currently subject to these observer coverage requirements. Therefore, there would be no change for these vessels under this proposed action.

The observer requirements for non-AFA trawl catcher/processors proposed for the Program would supercede the observer coverage requirements established under the GRS. The observer coverage requirements for vessels subject to the GRS are essentially the same as those under the Amendment 80 Program, except that under the GRS, both observers onboard non-AFA trawl catcher/processors are required to be level two observers specially trained in catcher/processor operations (i.e. two lead level two observers). That requirement is not necessary to effectively obtain catch data and would be removed under Amendment 80. If this action is approved, only one of the two required observers would be required to be a lead level 2 observer for vessels subject to the GRS. The other observer would not need to be a level two observer.

Additionally, the GRS allows vessels to submit for approval to NMFS an alternative processing plan. An approved alternative processing plan would allow reduced observer coverage

if the plan would allow sampling of all hauls by only one observer. However, according to some members of industry, these vessels must operate 24 hours a day to be profitable, and it is unlikely that they would utilize an alternative processing plan. Additionally, because all vessels subject to Amendment 80 would also be subject to the GRS program, allowing an alternative processing plans under the GRS program, but not Amendment 80, could result in considerable confusion for Amendment 80 participants. Therefore, this provision is removed from observer coverage regulations for non-AFA trawl catcher/processors in the BSAI.

For these reasons and to avoid confusion among Amendment 80 participants, NMFS proposes to apply Amendment 80 observer coverage regulations to vessels subject to the GRS.

2. Observer Coverage for GOA Sideboard Fisheries

With the exception of the F/V GOLDEN FLEECE, NMFS would require observers on all Amendment 80 vessels subject to GOA sideboard limits. Observer requirements applicable to the F/V GOLDEN FLEECE are addressed in Part F of this section. Observer coverage for Amendment 80 vessels fishing in the GOA would help to ensure that vessels do not exceed the GOA sideboard limits. Observer coverage is the only currently available method for gathering data on species composition and halibut PSC rates that are not self-reported. As noted above, NMFS would rely on expanded observer composition sampling to assess species composition and halibut PSC rates.

Under current regulations, vessels under 125 ft (38.1 m) LOA have limited observer coverage which increases the amount of expansion required to estimate species composition and halibut PSC rates. Given the relatively small halibut PSC sideboard limit in the GOA under the Program, NMFS would require more timely and accurate observer data. NMFS proposes to increase the reliability of halibut PSC rates by requiring 100 percent observer coverage aboard the vessels subject to GOA sideboard limits. The level of observer coverage proposed under the Program provides a minimum amount of coverage necessary to track overall groundfish harvests and halibut PSC use by season with enough accuracy to manage the sideboard limits in the GOA for vessels that have substantial harvest and PSC use rates. NMFS notes that the observer coverage levels proposed for Amendment 80 vessels fishing in the GOA are identical to the observer coverage requirements necessary to manage groundfish and halibut PSC sideboard limits applicable to catcher/processor vessels participating in the opt-out fishery in the Central GOA Rockfish Program. An extensive discussion of observer coverage requirements for managing sideboard limits in the Central GOA Rockfish Program is provided in the final rule for that program (November 20, 2006; 71 FR 67210). The rationale for these observer coverage requirements is the same as the rationale for observer coverage levels to manage sideboard limits in the Amendment 80 program.

Non-Amendment 80 trawl catcher/processors would continue to be subject to existing observer coverage levels in the GOA. Any such vessels are not subject to GOA sideboard limits and would not require the same intensive level of halibut PSC monitoring.

Table 27 summarizes the observer monitoring requirements for the various components of the Program.

TABLE 27.—OBSERVER REQUIREMENTS FOR AMENDMENT 80 VESSELS IN THE PROGRAM

Fishing location	Observer coverage requirements
BSAI—All non-AFA trawl catcher/processors	Must have aboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process fish in the BSAI. At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if observer workload restrictions would preclude adequate sampling (i.e., 200% observer coverage).
GOA—All Amendment 80 vessels except for the F/V GOLDEN FLEECE.	Must have aboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process fish in the GOA or any additional requirements applicable under the Central GOA Rockfish Program (i.e., 100% observer coverage, or other observer requirements applicable when fishing under the Central GOA Rockfish Program).
GOA—F/V GOLDEN FLEECE only	Subject to existing regulations in § 679.50(c)(1)(v) or (c)(7)(i) while fishing in the GOA (i.e., 30% observer coverage, or other requirements when fishing under the Central GOA Rockfish Program).

B. Flow Scales

Non-AFA trawl catcher/processors in the BSAI would be required to install and weigh each haul individually on a motion compensated flow scale. Flow scales are intended to provide accurate records of total catch, and have been used successfully in directed pollock fisheries and CDQ Program groundfish fisheries. NMFS-approved scales would be inspected annually and tested daily when in use to ensure they are accurate within an approved range. Because observer samples would be expanded to the entire haul, catch from each haul would be required to be weighed separately on the scale. To facilitate separate weighing, catch from each haul would be prohibited from being mixed with other hauls at any location prior to the scale and the location at which an observer would collect his or her sample.

C. Observer Sampling Station

Non-AFA trawl catcher/processors in the BSAI would be required to provide an observer work station where an observer can work safely and effectively. Observer sampling stations would need to meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting, floor grating, and running water. Details of the sampling station requirements are included in § 679.28 of the proposed regulatory text. Each observer sampling station would be inspected and approved by NMFS annually.

D. Special Catch Handling Requirements for Non-AFA Trawl Catcher/Processors

1. Rationale

As discussed earlier, NMFS recognizes that there would be a strong incentive for Program participants to under-report the amount of halibut caught as bycatch. The opportunity to under-report halibut PSC CQ would be great on non-AFA trawl catcher/processors due to the current placement of observer sampling stations and construction of the vessels. These factors reduce the ability of observers to adequately monitor the passage of fish,

particularly halibut PSC, from the codend throughout the processing facilities until that catch is available for sampling.

2. Movement of Fish

In order to ensure proper catch accounting on non-AFA trawl catcher/processors, NMFS has developed a set of special catch handling requirements for these vessels. In brief, these special catch handling requirements would:

a. Prohibit a vessel from having fish remain on deck outside of the codend;

b. Prohibit the mixing of hauls; and

c. Prohibit the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer.

Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel mixes hauls from two different areas or depths, the species catch composition and relative weight of these hauls could differ substantially, and a composite sample taken at specific times as the catch moves through the processing facilities may not be representative of each individual haul. The lack of representative samples would increase the potential for erroneously assigning a specific species composition to a specific amount of fish. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls.

Adequate accounting of CQ and PSC under the Program would rely heavily on observer species composition samples. NMFS must have confidence that the data collected represent random collections of catch and that potential sources of bias have been minimized. Because the mixing of hauls could create unrepresentative species composition samples as described above, NMFS would prohibit the mixing of hauls.

Additionally, observers face many sampling difficulties when hauls are not kept separate inside fish bins. When multiple hauls are mixed, it is sometimes impossible for the observer to determine which catch is from a particular haul and the observer may not collect a discrete sample from each of the mixed hauls. As noted above, bias introduced into the sample by mixing of hauls is exacerbated when the sample is expanded to the weight of the entire hauls. Observers have several sampling tools available to them to determine the total catch of multiple mixed hauls. However, all of these tools result in reduced accuracy and precision for total catch determinations, especially when each of the mixed hauls has significantly different actual catch compositions.

The prohibition of mixing hauls could be accommodated in a number of ways that would not result in loss of fish quality or affect overall vessel operations. For example, under the Program, vessels could slow fishing effort and the frequency with which gear is deployed. Recent enforcement actions concerning intentional presorting of catch to bias observed halibut PSC use rates document the practice of biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples would be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule.

The use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling. This could result in inaccurate accounting of CQ and PSC species. Therefore, vessels would be prohibited from the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer.

Unsorted catch could not remain on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling and dumping. NMFS believes that fish that remain in a codend do not present a large opportunity for presorting activities. However, unsorted catch on deck outside of a codend could easily be presorted.

3. Bin Monitoring

The Program would require observation and monitoring of all crew activities within any bin or tank prior to the observer sampling unsorted catch on all non-AFA trawl catcher/processors. This would reduce the incentive and ability to under-report halibut catch.

Catcher/processors may facilitate observation and monitoring of crew activities within a bin or tank by using at least one of the three following options:

a. Prohibit crew members from entering bins unless the observer is provided an opportunity to monitor all crew activities within the bin;

b. Install viewing ports in the bins; or

c. Install video monitoring system in the bins.

Each vessel operator fishing in the BSAI must choose one of these options. Vessel operators that choose the first option must ensure that crew members do not enter a fish bin when fish are in it, unless the observer has been given a chance to observe the activities of the crew inside the bin. Based on conversations with vessel owners and operators in this sector, a crew member may be required to be inside the bin to facilitate the movement of fish from the bin. Crew members would be allowed inside bins if the flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that the vessel crew must enter the tank.

When informed by an observer that all sampling has been completed for a given haul, crew would be able to enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station. Vessel operators may be able to use water to facilitate the movement of fish in some fisheries. However, industry participants have indicated that water may degrade the quality and value of some fish species (e.g., AI POP). Therefore, NMFS developed options to allow an observer to see inside the bin while fish are exiting the bin, and ensure that presorting activities would not occur.

Vessel operators that choose the second option would be required to provide a viewing window into the bin. The observer must be able to see all actions of the crew member inside the bin from the same position they are conducting their normal sampling duties. For example, while the observer is sorting catch at the observer sample station table, crew member activities inside the bin must be viewable by the observer from the sample station table. This option would be acceptable for vessels that may not need a crew member in the bin frequently or have uniformly shaped bins and an observer sampling station in close proximity to the bin area.

Vessel operators that choose the third option would be required to develop and install a digital video monitoring system. The system would include a sufficient number of cameras to view all activities of anyone inside the bin. Video cameras would be required to record images in color and in low light conditions. To ensure that an observer can monitor crew member activities in the bin while sampling, a color monitor

would be required to be located in the observer sampling station. An observer would be given the opportunity to review any video data at any time during a trip. Each video system would be required to provide enough storage capacity to store all video data for an entire trip. Because NMFS may not be aware of potential presorting violations until after an observer disembarks the vessel and is debriefed, the vessel must retain all data for a minimum of 120 days from the beginning of each trip, unless notified by NMFS that the data may be removed. Specific requirements for cameras, resolution, recording formats, and other technical information is detailed in the regulatory text under § 679.28(i)(1)(iii).

If at any time during a trip, the viewing window or video options do not allow an observer to clearly identify and monitor crew activities within the fish bin or do not meet the required specifications, the vessel must revert to the first option and prohibit crew from entering the bin. The use of options two and three would be approved by NMFS during the vessel's annual observer sampling station inspection as described at § 679.28(d).

Regulations governing these bin monitoring options were also implemented for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program. To avoid redundant regulations for multiple management programs, NMFS proposes to remove bin monitoring regulations from regulations governing the Central GOA Rockfish Program (see § 679.84(c)(9)(i) through (iii)), and add them to § 679.28(i). Section 679.28 has historically contained regulations that describe technical specifications for various equipment and monitoring tools for multiple management programs. Placing regulations that describe bin monitoring standards for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or Amendment 80 is consistent with this intent.

In addition to proposing to move bin monitoring regulations from § 679.84(c)(9) to § 679.28(i) and requiring all non-AFA trawl catcher/processors to meet these requirements, NMFS proposes several technical changes to the bin monitoring regulations set forth at § 679.28(i) of the proposed regulatory text. Non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or while fishing in the BSAI would be subject to these requirements. Proposed revisions to the current bin monitoring standards (currently found at § 679.84(c)(9), but proposed to be moved to § 679.28(i)) include correcting cross references and reorganizing the structure of several paragraphs to improve clarity and consistency with other related regulations. Additionally, regulations describing the process for arranging a bin monitoring inspection are proposed to be revised slightly, and owners would then be able to contact NMFS by e-mail. Because bin monitoring inspections would occur simultaneously with observer sampling sation inspections, regulations at § 679.28(d)(8)(i) would be revised to reflect these changes.

Regulations at § 679.28(i)(1)(iii)(B) would describe minimum standards for video data storage. Currently, regulations governing this standard for the Central GOA Rockfish Program require the video system to include a USB hard drive, and do not allow NMFS to approve an alternate removable storage device. However, since implementation of this regulation, NMFS has found that video systems may not be available that meet this standard. Section 679.28(i)(1)(iii)(B) would be revised to require that the video system include at least one external USB hard drive (1.1 or 2.0), or other removable storage device approved by NMFS. If adopted, NMFS could approve alternative removable storage devices, thereby providing additional flexibility to vessel owners and operators who chose to use video monitoring. Finally, regulations at § 679.28(i)(1)(iii)(A) would be revised to clarify that video systems must record a time/date stamp for each frame in Alaska local time.

4. Pre-Cruise Meeting

Operators of non-AFA trawl catcher/processors fishing in the BSAI would be required to provide the opportunity for a pre-cruise meeting for observers who have not been deployed on that vessel in the last 12 months. A pre-cruise meeting would include at least one NMFS staff member, the vessel operator, and the observer(s). NMFS has offered pre-cruise meetings to vessels on a voluntary basis for the last five years and observer and industry participants in these meetings have found them to be extremely beneficial. Given the new monitoring requirements under the Program, observers and vessel personnel would benefit from a mutual understanding of the observers' role.

For the same reasons described above, pre-cruise meeting requirements were also implemented for non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program. Regulations at § 679.84(c)(7) require non-AFA trawl catcher/processors subject to the Central GOA Rockfish Program to provide the opportunity for a pre-cruise meeting if an observer had never been deployed on that vessel. The proposed monitoring requirements are relatively new to non-AFA trawl catcher/processors participating in the Central GOA Rockfish Program or Amendment 80. A non-AFA trawl catcher/processor participating in the Central GOA Rockfish Program could avoid the pre-cruise meeting requirement if an observer assigned to his or her vessel were deployed on the vessel prior to implementation of the program. However, this would circumvent the intent of this regulation to orient any observers unfamiliar with the bin monitoring requirements on that particular vessel. Additionally, NMFS is striving to maintain consistency between the monitoring requirements for each of the two programs, to avoid confusion among program participants. For these reasons, NMFS proposes to revise regulations at § 679.84(c)(7) so that non-AFA trawl catcher/processors fishing in the Central GOA Rockfish Program would also be required to provide the opportunity for a pre-cruise meeting for observers who have not been deployed on that vessel in the last 12 months.

E. M&E Requirements for Amendment 80 Vessels in the GOA

With the exception of the F/V GOLDEN FLEECE, Amendment 80 vessels participating in GOA groundfish fisheries would be required to meet some of the M&E requirements applicable to non-AFA trawl catcher/processors in the BSAI. Specifically, operators of Amendment 80 vessels participating in GOA groundfish fisheries would be required to maintain 100 percent observer coverage, would be prohibited from mixing hauls inside the bin, would be subject to maintain bin monitoring requirements, may only have one operational line at the point the observer collects his or her samples, and would be prohibited from allowing fish on deck outside the codend.

Maintaining these catch handling requirements for vessels in the GOA would ensure that GOA groundfish and halibut PSC limits are properly monitored. A detailed discussion for the need to maintain these M&E requirements is in the draft EA/RIR/IRFA prepared for this action and is not repeated here (see **ADDRESSES**). NMFS notes that the M&E requirements for Amendment 80 vessels would be consistent with the same M&E requirements applicable to catcher/processor vessels to monitor sideboard limits in the opt-out fishery under the

Central GOA Rockfish Program (November 20, 2006; 71 FR 67210).

Flow scales and observer sample stations would not be required for Amendment 80 vessels to fish in the GOA. Flow scales and observer sampling stations assist observers to obtain accurate haul-by-haul accounting of total catch. However, NMFS would make fishery closure decisions for the entire Amendment 80 sector in the GOA. The high degree of precision that flow scales and observer sampling stations provide, and that is necessary for cooperative, limited access fishery management, fishing under the CDQ Program, or GRS monitoring, would not be required to monitor catch and PSC use by Amendment 80 vessels in the aggregate. Given the other M&E provisions described above, NMFS would be able to rely on observer estimates of total catch for catch accounting in the GOA. Inaccuracies associated with observer estimates, as well as any inaccuracies that result from the observer not having a sample station, would be expanded to all Amendment 80 vessels and averaged over multiple vessels. Because observer sample stations would not be required, Amendment 80 vessels fishing in the GOA would not be required to provide space for at least 10 observer baskets.

F. M&E Requirements for the F/V GOLDEN FLEECE in the GOA

As noted earlier, the Program would recognize the unique fishing patterns of the F/V GOLDEN FLEECE, prohibit the vessel from being used in specific groundfish fisheries that it has not historically fished and that are subject to a GOA sideboard limit, and exempt it from GOA halibut PSC sideboard limits. Because NMFS would not need to monitor catch and halibut PSC use for GOA sideboard limit management, the M&E requirements in the GOA applicable to other Amendment 80 vessels would not apply to the F/V GOLDEN FLEECE when fishing in the GOA. The F/V GOLDEN FLEECE would be managed under existing observer coverage and M&E requirements in the GOA. The Program would not exempt the F/V GOLDEN FLEECE from observer coverage requirements applicable under the Central GOA Rockfish Program which may be more restrictive. Additionally, if the F/V GOLDEN FLEECE chooses to fish in the BSAI, the vessel would have to comply with the monitoring requirements at § 679.93(c).

G. Consistency With Central GOA Rockfish Program M&E Requirements

Many of the Amendment 80 vessels are also qualified to fish under the requirements and restrictions of the Central GOA Rockfish Program. The Program does not relieve or otherwise modify M&E requirements under the Central GOA Rockfish Program (e.g., flow scales, observer sampling station requirements), except to move and revise slightly the bin monitoring standards to § 679.28. NMFS has attempted to conform M&E requirements applicable to non-AFA trawl catcher/processors fishing in the BSAI to the M&E requirements applicable to catcher/processor vessels fishing under a Central GOA Rockfish CQ permit or in the Central GOA Rockfish limited access fishery. Similarly, the M&E requirements applicable to Amendment 80 vessels in the GOA would conform to the M&E requirements applicable to catcher/processors in the Central GOA Rockfish opt-out fishery. Integrating M&E requirements between these LAPPs should reduce compliance costs and potential confusion that may arise with differing standards for the affected catcher/processor vessels.

H. Summary Table

Table 28 summarizes the specific M&E requirements that would apply to non-AFA trawl catcher/processors in the BSAI and GOA.

TABLE 28.—MONITORING REQUIREMENTS IN THE PROGRAM

M&E requirement	Fishing location		
	BSAI (All non-AFA trawl catcher/processors)	GOA—Except F/V GOLDEN FLEECE (Amendment 80 vessels)	GOA—F/V GOLDEN FLEECE
Observer coverage level	200% (Two observers)	100% (One observer)	30% (Status quo).
Flow scale	Yes	No	No.
Observer sampling station	Yes	No	No.
One operational line	Yes	Yes	No
No mixing of hauls	Yes	Yes	No.
No fish on deck outside codend	Yes	Yes	No.
Bin monitoring	Yes	Yes	No.
Pre-cruise meeting required	Yes	No	No.
VMS	Status quo, see regulations at § 679.28(f).		

XIII. Economic Data Report

A. Background

The Council recommended a socioeconomic data program to collect cost, revenue, and other economic data as part of the Program. This information would be used to better understand the economic effects of the Program on vessels or entities regulated by this action, and to assist the development of future management actions. NMFS would collect this information using an annual EDR.

The EDR would help assess whether the Program mitigates the costs associated with bycatch reduction and improved utilization of groundfish. The EDR would provide information to review the Program unavailable through other means. To ensure that the necessary information would be collected, EDR data submission would be mandatory for all Amendment 80 QS holders. Information collected under the EDR would be confidential under the requirements of Section 402(b) of the MSA and would be considered confidential under NOAA Administrative Order 216–100, which sets forth procedures to protect the confidentiality of fishery statistics.

B. Information Collected

Economic data collected under this program include revenue and cost data associated with a specific Amendment 80 vessel owned by an Amendment 80 QS holder, or with an Amendment 80 LLP license in those limited cases when the Amendment 80 QS permit is assigned to an Amendment 80 LLP license. See Section VI of the preamble for more detail on Amendment 80 QS permits assigned to an Amendment 80 LLP license.

The EDR would assist the Council and NMFS when analyzing changes in the use of fishery resources. The Program may change the use of fishery resources. As examples of change, fishery participants could choose to serve different markets with different species and products, or to idle vessels under the provisions of the Program. The EDR would provide necessary data to determine whether fishing and production choices are responses to market forces, and the extent to which increased changes in fishing behavior and resource use have reduced total average costs.

Determining the bycatch reduction costs under the Program requires an examination of the extent to which targeting and production choices affect profitability and the economic performance of participants. The suite of revenue and cost information that would be required is detailed in § 679.94(b) and (c) of the proposed regulatory text and is not repeated here.

C. Who Must Provide an EDR

Amendment 80 QS holders would be required to submit the EDR. An EDR would be required for each Amendment 80 QS permit held by a person. This ensures that a person holding multiple Amendment 80 QS permits would describe the full range of cost and revenue information attributable to a given permit, whether that permit is assigned to a specific vessel or to a cooperative.

The Amendment 80 QS holder would be required to appoint a contact individual, called a ''designated representative,'' who on behalf of the QS holder, would respond to inquiries and NMFS regarding data and the EDR.

Because EDR submission would be mandatory, NMFS would provide compliance incentives. In addition to incentives to avoid enforcement actions, another incentive would be to prohibit an Amendment 80 QS holder who did not submit an EDR from receiving an Amendment 80 limited access fishery permit or CQ derived from their Amendment 80 QS permits.

D. Submission Deadlines for EDRs

NMFS would require an annual EDR be submitted for the previous calendar year of activity no later than June 1 of the year following fishing. This filing deadline would provide the Amendment 80 QS holder at least five months to gather and review records from the previous year. The EDR form would be mailed to Amendment 80 QS holders, and be available on the NMFS Web site at *http://www.fakr.noaa.gov.* The address for EDR submission is provided in § 679.94 of the proposed regulatory text. The first EDR would be required on June 1, 2009, which is after the first year of fishing under the Program. An EDR would be due every June 1 after 2009.

E. Verification of Data

Measures to verify data accuracy of the data would be developed by NMFS economists and analysts. These measures would help NMFS to ascertain anomalies, outliers, and other deviations from averaged variables. NMFS would amend data in the EDR through this audit verification process. The principle means to verify data and resolve questions would be consultation between NMFS and the submitter. NMFS would contact the EDR submitter and request oral or written confirmation of data submissions. Further, NMFS would request copies of or review documents or statements that would substantiate data submissions. The person submitting the EDR would need to respond within 20 days of NMFS's information request. Responses after 20 days could be considered untimely and could result in a violation and enforcement action.

NMFS would audit an EDR either through random selection or when circumstances require more thorough review of the submissions. In instances where a random audit occurs or an audit is otherwise justified, NMFS may retain a professional auditor/accounting specialist who would review the data submitted in the EDR. The auditory could request financial documents substantiating the data submitted in the EDR. An auditor/accounting specialist would be subject to strict confidentiality requirements.

XIV. Classification

At this time, NMFS has not determined that the FMP that this rule would implement, Amendment 80, is consistent with the national standards of the MSA and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to the affected participants in the Amendment 80 sector. Specific aspects of the RIR are discussed below in the IRFA section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). Copies of the EA/RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, and a statement of the objectives of, and the legal basis for, this action are contained in the **SUMMARY** section of the preamble. A summary of that analysis follows.

Why Action by the Agency Is Being Considered and Objectives of, and Legal Basis for, the Proposed Rule

The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA, CRP, Coast Guard Act, and MSRA provide the legal basis for the proposed rule, as discussed in Section II of this preamble. The objectives of the proposed rule are to reduce excessive fishing capacity, end the race for fish under the current management strategy, reduce bycatch, and reduce discards for commercial fishing vessels using trawl gear in the non-pollock groundfish fisheries in the BSAI. By ending the race for fish, NMFS expects the proposed action to increase resource conservation, improve economic efficiency, and address social concerns.

Number of Small Entities to Which the Proposed Rule Would Apply

For purposes of an IRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for

these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future. Even if additional catcher/processors would have been identified as small entities under a revised small entity size classification for catcher/processors, NMFS would have analyzed the effect on small entities using the same methods that were used in the IRFA prepared for the proposed Program. NMFS considered the effects of the Program and attempted to reduce costs to all directly regulated entities regardless of the number of small entities.

The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. The IRFA estimates that as many as 28 entities, that own approximately 28 catcher/processor vessels, would be eligible to receive QS under the Program.

Of the estimated 28 entities owning vessels eligible for fishing under the Program, one is estimated to be a small entity because it generated less than $4.0 million in gross revenue based on participation in 1998 through 2004. All other entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA.

One entity made at least one Amendment 80 landing from 1998 to 2004, but did not appear to qualify as an eligible Amendment 80 vessel. This entity is not a small entity by SBA standards. Moreover, this vessel that the IRFA considers ''non-qualified'' would not be allowed to continue fishing under the requirements imposed by the CRP. Therefore, the non-qualified vessels is not considered impacted by the proposed rule and is not discussed in this IRFA.

The six CDQ groups participating in the CDQ Program are not-for-profit entities that are not dominant in the overall BSAI fishing industry. Thus, the six CDQ groups directly regulated by the proposed action would be considered small entities or ''small organizations'' under the RFA.

Several communities (e.g., Dutch Harbor, Seattle) could be indirectly impacted by the Program. Most of the Amendment 80 vessels have home ports in Seattle, Washington, but operate throughout Alaska and rely on other communities for support services. The specific impacts on these communities cannot be determined until NMFS issues QS and eligible harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Impacts on Directly Regulated Small Entities

While the proposed action is distributional in nature, the overall impact to small entities is expected to be positive. Impacts from the Program would accrue differentially (i.e., some entities could be negatively affected and others positively affected).

The Council considered an extensive range of alternatives, options, and suboptions as it designed and evaluated the potential for changes to non-pollock groundfish management in the BSAI, including the ''no action'' alternative. The EA/RIR/IRFA presents four alternative programs for management of the non-pollock groundfish fisheries in the BSAI: Alternative 1-Status Quo/No Action; Alternative 2 allowing only multiple cooperatives; Alternative 3 allowing only a single Amendment 80 sector cooperative; and Alternative 4, the preferred alternative, for multiple cooperatives with an option for a limited access fishery. These alternative constitutes the suite of ''significant alternatives'' for the proposed action for the purposes of the RFA.

Under the status quo, non-pollock groundfish fisheries harvested with trawl gear have followed the well known pattern associated with managed open access. These fisheries have been characterized by a ''race-for-fish'' capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity, and widespread economic instability all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the non-pollock trawl fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. As indicated in the IRFA, all the Amendment 80 sector companies and corporations would be considered to be directly regulated by this action. Based on a review of available data, only one of the Amendment 80 sector companies or corporations would be a small entity, as defined under RFA. This small entity and other entities are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time, area, and gear restrictions, and LLP license requirements) do not provide managers with the ability to effectively solve these problems, thereby making MSA goals difficult to achieve and forcing reevaluation of the existing FMP.

Bycatch reduction measures proposed under the Program reduce the potential discarding of fish and aid the directly regulated entities in meeting the requirements of the MSA. The costs for complying with these measures are offset by the ability of vessel operators to coordinate fishing operations in a cooperative, designate specific vessels better able to comply with M&E requirements thereby avoiding the costs of compliance for some vessels in the cooperative or sharing the remaining costs among cooperative members, and tailor fishing operations to maximize profit without the need to engage in less efficient practices in a race for fish.

In an effort to alleviate the problems caused by excess capacity, the race for fish, and to reduce discards for commercial fishing vessels using trawl gear in the non-pollock groundfish fisheries in the BSAI, the Council determined that the institution of some form of LAPP was needed to improve fisheries management in accordance with the MSA.

The cooperative alternative would allocate annual harvesting privileges of Amendment 80 species TAC and crab and halibut PSC to harvester cooperatives as CQ, creating a transferable access privilege as a share of the TAC, thus removing the ''common property'' attributes of the status quo on qualifying harvesters. These changes would likely benefit the regulated entities. In recent years, harvesters have competed in the race for fish against larger businesses. The cooperative alternative would allow entities to slow their rate of fishing and give more attention to efficiency and product quality.

The participants would be permitted to form cooperatives that could lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of the Program cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels under cooperative management because a vessel only needs to be large enough to harvest the cooperative's CQ.

Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, Alternative 4 holds promise by providing efficiency gains. Data on cost and operating structure are unavailable, so a quantitative evaluation of the size and distribution of these gains accruing to harvesters under this management regime cannot be provided. Nonetheless, it appears that Alternative 4 offers improvements over the status quo through the institution of a LAPP structure. Alternative 4 also includes provisions for the fishery participants that the Council expressly sought to include—specifically, harvesters that have been both historically and recently active.

Alternative 4, which would be implemented by the Program, offsets compliance costs required to improve retention and utilization of fishery resources in several ways. By implementing a LAPP vessels can increase the value and associated revenue from harvested products through better quality control and developing additional product forms not possible under status quo management. Alternative 4 would also allow the directly regulated entities to join cooperatives, receive value from their catch through cooperative harvesting arrangements, and have other vessels harvest the allocation. Compliance costs for a cooperative member would be eliminated, or greatly reduced if those costs are shared over the entire cooperative.

CDQ groups, which are small entities, would benefit under the Program by increasing the nonspecified reserve and the CDQ reserves, increasing PSQ allocations for halibut, crab, and non-Chinook salmon, reducing M&E requirements for CDQ vessels, and removing some reporting requirements.

Alternative 4 appears to minimize negative economic impacts to the Amendment 80 sector to a greater extent than the status quo (Alternative 1), the multiple cooperative (Alternative 2), or single cooperative (Alternative 3) options.

The Council concluded that the Program best accomplishes the stated objectives articulated in the purpose and need statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the Program would change the overall reporting structure and recordkeeping requirements of the participants in BSAI and GOA groundfish fisheries. All participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation.

NMFS would be required to develop new databases to issue QS and CQ and monitor harvesting and processing allocations. These changes could require the development of new reporting systems.

To participate in the Program, persons would be required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour. Persons would be required to submit an application for Amendment 80 QS the start of the Program. Persons would be required to complete additional forms every year, such as the applications to fish for an Amendment 80 cooperative or Amendment 80 limited access fishery. Additionally, reporting for purposes of catch accounting or transfer of CQ among Amendment 80 cooperatives would be completed more frequently.

It would cost participants in the Program an estimated $56 to complete applications to participate in the Program, $55 for the annual application to participate in an Amendment 80 cooperative or limited access fishery, and $61 to complete a transfer of CQ.

NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (Internet version and optional fax version) would be used to debit CQ and track catch in the Amendment 80 limited access fishery. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper-based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the proposed electronic reporting system would provide continuous access to accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS believes that the added benefits of the electronic reporting system outweigh any benefits of the paper-based system. However, NMFS would also provide an optional backup using existing telecommunication and paper-based methods, which would reduce the burden on small entities in more remote areas with limited electronic infrastructure.

Under this proposed rule, catcher/processors would be required to purchase and install motion-compensated scales (i.e., flow scale) to weigh all fish at-sea. Currently approved flow scales cost approximately $50,000. Equipment to outfit an observer station, including a motion-compensated platform scale to verify the accuracy of the flow scale, costs between $6000 and $12,000. Due to space constraints on many catcher/processors, the need to relocate sorting space and processing equipment, and the wide range of configurations on individual vessels, the installation cost range for the scales and observer sample stations could cost between $20,000 and $250,000 per vessel. Installation costs exceeding $100,000 are expected to be rare. The total cost of purchasing and installing scales and sample stations may range between $76,000 and $300,000 per vessel. Based on discussions with equipment vendors, NMFS estimates that 10 catcher/processors, none of which are small entities, would choose to fish in the BSAI and would be required to have scales. This estimate does not include catcher/processor vessels that have already installed flow scales in compliance with other programs (i.e., CDQ Program and Central GOA Rockfish Program) and is likely to overestimate the total number of entities that will install this equipment based solely on the requirements for the Program.

NMFS would increase observer coverage for Program participants in most cases. In similar NMFS-managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and crab PSC rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form cooperatives, which would limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage would be required and offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage would cost approximately $355 per day. Additional costs may be incurred by owners of catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary depending on specific conditions of each vessel.

NMFS determined that a vessel monitoring system (VMS) is essential to the proper enforcement of the Program. Therefore, owners and operators of vessels participating in the Program would be required to participate in a VMS program. Depending on which brand of VMS a vessel owner or operator chooses to purchase, NMFS estimates that this requirement would impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. NMFS does not estimate that any additional vessel owners or operators would incur these costs if they choose to participate in the Program. Those vessels that would be likely to participate in the Program are already subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sampling station, and the type of viewing port installed. These costs cannot be estimated with existing information. Some vessel owners and operators that are eligible to participate in this Program may modify some of their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional costs for those vessels.

Because NMFS would allow vessel owners and operators to select the video option using performance standards, the costs for a vessel to implement this option could be quite variable, depending on the nature of the system chosen. In most cases, the system would consist of one digital video recorder (DVR)/computer system and between two and eight cameras. DVR systems range in price from $1,500 to $10,000, and cameras cost from $75 to $300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between $400 and $3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately $2,000, a complex installation will cost approximately $10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation would be expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, we estimate an annual cost of $680 to $4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

Vessel owners and operators that are eligible to participate in the Central GOA Rockfish Program and this Program may modify their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional installation costs. Annual system maintenance costs are anticipated to be partially borne by the requirements in the Central GOA Rockfish Program.

Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

No federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

Collection-of-Information

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Public reporting burden per response for these requirements is listed by OMB control number.

OMB Control No. 0648–0213

Total public reporting burden for this collection is 36,705 hours. Recordkeeping and reporting requirements are described in this collection.

OMB Control No. 0648–0330

Public reporting burden per response is estimated to average 0.1 hr per at-sea scale inspection request; 0.17 hr for observer sampling station inspection request; 0.17 hr for bin monitoring inspection request; 1 hr for video monitoring system; 2 hr for at-sea scale approval report/sticker; 0.03 hr for observer notification of scale tests; 0.75 hr for records of at-sea scale tests; and 0.02 hr for printed output, at-sea scales.

OMB Control No. 0648–0334

Total public reporting burden for this collection is 544 hours. License Limitation Program (LLP) applications are described in this collection.

OMB Control No. 0648–0445

Total public reporting burden for this collection is 13,152 hours. Vessel monitoring system requirements are described in this collection.

OMB Control No. 0648–0515

Total public reporting burden for this collection is 3,343 hours. Interagency electronic reporting system requirements are described in this collection.

This rule also contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements is listed by OMB control number.

OMB Control No. 0648—New (Amendment 80 Permits)

Public reporting burden per response is estimated to average 2 hr for the Application for Amendment 80 QS; 2 hr for the Application for CQ; 2 hr for the

Application for the Amendment 80 limited access fishery; 2 hr for the Application to Transfer Amendment 80 QS; 2 hr for the Application for CQ Transfer; 4 hr for Annual Amendment 80 cooperative report; and 4 hr for a letter of appeal, if denied a permit.

OMB Control No. 0648—New (Amendment 80 EDR)

Public reporting burden per response is estimated to average 7.5 hr for an Economic Data Report and 3 hr for verification of data.

OMB Control No. 0648–0269

Public reporting burden per response is estimated to average 1 hr for a CDQ delivery report and 15 minutes for a CDQ catch report.

Response times include the 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 this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by e-mail 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, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 16, 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 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.2 add the following definitions in alphabetical order: ''Amendment 80 cooperative'', ''Amendment 80 fishery'', ''Amendment 80 initial QS pool'', ''Amendment 80 legal landing'', ''Amendment 80 limited access fishery'', ''Amendment 80 LLP license'', ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'', ''Amendment 80 LLP/QS license '', ''Amendment 80 mackerel QS'', ''Amendment 80 mackerel vessel'', ''Amendment 80 non-mackerel QS'', ''Amendment 80 non-mackerel vessel'', ''Amendment 80 official record'', ''Amendment 80 Program'', ''Amendment 80 PSC'', ''Amendment 80 QS holder'', ''Amendment 80 QS permit'', ''Amendment 80 QS pool'', ''Amendment 80 QS unit'', ''Amendment 80 sector'', ''Amendment 80 species'', ''Amendment 80 vessel'', ''BSAI trawl limited access sector'', ''CQ permit'' ''Economic data report (EDR)'', ''Initial Total Allowable Catch (ITAC)'', and revise the definition of ''Cooperative quota (CQ)'', and the heading of the definition of ''Ten percent or greater direct or indirect ownership interest'' to read as follows:

§ 679.2 Definitions.

* * * * *

Amendment 80 cooperative means a group of Amendment 80 QS holders who have chosen to fish cooperatively for Amendment 80 species under the requirements of subpart H to this part and who have applied for and received a CQ permit issued by NMFS to catch a quantity of fish expressed as a portion of the ITAC and crab and halibut PSC limits.

Amendment 80 fishery means an Amendment 80 cooperative or the Amendment 80 limited access fishery.

Amendment 80 initial QS pool means the sum of Amendment 80 QS units established for an Amendment 80 species in a management area based on the Amendment 80 official record and used for the initial allocation of Amendment 80 QS units and use cap calculations as described in § 679.92(a).

Amendment 80 legal landing means the total catch of Amendment 80 species in a management area in the BSAI by an Amendment 80 vessel that:

(1) Was made in compliance with state and Federal regulations in effect at that time; and

(2) Is recorded on a Weekly Production Report from January 20, 1998, through December 31, 2004; and

(3) Amendment 80 species caught while test fishing, fishing under an experimental, exploratory, or scientific activity permit, or fishing under the Western Alaska CDQ Program are not considered Amendment 80 legal landings.

Amendment 80 limited access fishery means the fishery conducted in the BSAI by persons who have not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to an Amendment 80 cooperative, and who have assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to the Amendment 80 limited access fishery.

Amendment 80 LLP license means:

(1) The LLP licenses listed in Column C of Table 31 to this part; and

(2) Any LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation that designates an Amendment 80 vessel in an approved application for Amendment 80 QS.

Amendment 80 LLP license originally assigned to an Amendment 80 vessel means the LLP license listed in Column C of Table 31 to this part that corresponds to the vessel listed in Column A of Table 31 to this part with the USCG Documentation Number listed in Column B of Table 31 to this part.

Amendment 80 LLP/QS license means an Amendment 80 LLP license issued to an Amendment 80 LLP holder with the Amendment 80 QS permit assigned to that license.

Amendment 80 mackerel QS means Atka mackerel QS derived from Amendment 80 legal landings assigned to an Amendment 80 mackerel vessel.

Amendment 80 mackerel vessel means an Amendment 80 vessel that is not an Amendment 80 non-mackerel vessel.

Amendment 80 non-mackerel QS means Atka mackerel QS derived from Amendment 80 legal landings assigned to an Amendment 80 non-mackerel vessel.

Amendment 80 non-mackerel vessel means an Amendment 80 vessel that is less than 200 feet in length overall and

that has been used to catch less than 2.0 percent of the total Amendment 80 legal landings of BSAI Atka mackerel.

Amendment 80 official record means information used by NMFS to determine eligibility to participate in the Amendment 80 Program and to assign specific catch privileges to Amendment 80 QS holders.

Amendment 80 Program means the Program implemented under subpart H of this part to manage Amendment 80 species fisheries by limiting participation in these fisheries to eligible participants.

Amendment 80 PSC means halibut and crab PSC as described in Table 35 to this part that are allocated to the Amendment 80 sector.

Amendment 80 QS holder means a person who is issued an Amendment 80 QS permit by NMFS.

Amendment 80 QS permit means a permit issued by NMFS that designates the amount of Amendment 80 QS units derived from the Amendment 80 legal landings assigned to an Amendment 80 vessel for each Amendment 80 species in a management area.

Amendment 80 QS pool means the sum of Amendment 80 QS units established for each Amendment 80 species in a management area based on the Amendment 80 official record.

Amendment 80 QS unit means a measure of the Amendment 80 QS pool based on Amendment 80 legal landings.

Amendment 80 sector means:

(1) Those Amendment 80 QS holders who own Amendment 80 vessels and hold Amendment 80 permits and Amendment 80 LLP licenses; or

(2) Those Amendment 80 QS holders who hold Amendment 80 LLP/QS licenses.

Amendment 80 species means the following species in the following regulatory areas:

(1) BSAI Atka mackerel;

(2) Aleutian Islands Pacific ocean perch;

(3) BSAI flathead sole;

(4) BSAI Pacific cod;

(5) BSAI rock sole; and

(6) BSAI yellowfin sole.

Amendment 80 vessel means:

(1) The vessels listed in Column A of Table 31 to this part with the corresponding USCG Documentation Number listed in Column B of Table 31 to this part; or

(2) Any vessel that:

(i) Is not listed as an AFA trawl catcher/processor under sections 208(e)(1) through (20) of the American Fisheries Act; and

(ii) Has been used to harvest with trawl gear and process not less than 150 mt of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole in the aggregate in the BSAI during the period from January 1, 1997, through December 31, 2002.

* * * * *

BSAI trawl limited access sector means fisheries conducted in the BSAI by persons using trawl gear and who are not:

(1) Using an Amendment 80 vessel or an Amendment 80 LLP license; or

(2) Fishing for CDQ groundfish.

* * * * *

Cooperative quota (CQ):

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

CQ permit means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2) or to a rockfish cooperative under § 679.4(n)(1).

* * * * *

Economic data report (EDR) means the report of cost, labor, earnings, and revenue data required under § 679.94.

* * * * *

Initial Total Allowable Catch (ITAC) means the tonnage of a TAC for an Amendment 80 species in a management area that is available for apportionment to the BSAI trawl limited access sector and the Amendment 80 sector in a calendar year after deducting from the TAC the CDQ reserve, the incidental catch allowance the Regional Administrator determines is required on an annual basis, as applicable, to account for projected incidental catch of an Amendment 80 species by non-Amendment 80 vessels engaged in directed fishing for groundfish and, for Atka mackerel, the Atka mackerel jig allocation.

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and Rockfish Program * * *

* * * * *

3. In § 679.4, paragraphs (a)(1)(xiii), (b)(6)(iv), (k)(12), and (o) are added to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see . . .
* * * * * * *		
(xiii) Amendment 80 Program:		
(A) Amendment 80 QS permit	Indefinite	§ 679.90(b).
(B) CQ permit	Specified fishing year	§ 679.91(b).
(C) Amendment 80 limited access fishery	Specified fishing year	§ 679.91(b).

* * * * *

(b) * * *

(6) * * *

(iv) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued to an Amendment 80 vessel.

* * * * *

(k) * * *

(12) *Amendment 80 Program.* In addition to other requirements of this part, a license holder must have an Amendment 80 LLP license to conduct fishing for an Amendment 80 species assigned to the Amendment 80 sector.

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 QS permit.* (i) An Amendment 80 QS permit is issued to

a person who submits a timely and complete application for Amendment 80 QS that is approved by NMFS under § 679.90(b).

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel that gave rise to that permit under the provisions of § 679.90(b), unless the Amendment 80 QS permit is assigned to the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d).

(iii) If an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel the Amendment 80 QS permit will designate the Amendment 80 vessel to which that permit is assigned.

(iv) If an Amendment 80 QS permit is assigned to the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d)(2)(ii) or § 679.90(e)(4), the Amendment 80 QS permit will be permanently affixed to the Amendment 80 LLP license originally assigned to an Amendment 80 vessel and will be designated as an Amendment 80 LLP/QS license.

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(e).

(vi) A person must hold an Amendment 80 LLP license to hold an Amendment 80 QS permit.

(2) *Amendment 80 Cooperative quota (CQ) permit.* (i) A CQ permit is issued annually to an Amendment 80 cooperative that submits a timely and complete application for CQ that is approved by NMFS as described at § 679.91(b)(4).

(ii) A CQ permit authorizes an Amendment 80 cooperative to catch a quantity of fish expressed as a portion of the ITAC and halibut and crab PSC that may be held for exclusive use by that Amendment 80 cooperative.

(iii) A CQ permit will indicate the amount of Amendment 80 species that may be caught by the Amendment 80 cooperative, and the amount of Amendment 80 crab and halibut PSC that may be used by the Amendment 80 cooperative. The CQ permit will list the members of the Amendment 80 cooperative, Amendment 80 LLP licenses, Amendment 80 QS permits, and Amendment 80 vessels that are assigned to that Amendment 80 cooperative.

(iv) The amount of CQ listed on the CQ permit will be based on:

(A) The amount of Amendment 80 QS units held by all members of the Amendment 80 cooperative designated on a timely and complete application for CQ as described under § 679.91(b) that is approved by NMFS;

(B) The Amendment 80 QS units derived from Amendment 80 QS permits held by members of the Amendment 80 cooperative who have submitted a timely and complete EDR for all Amendment 80 QS permits held by that member as described under § 679.94; and

(C) The amount of CQ as modified by an application for CQ transfer as described under § 679.91(g) that is approved by NMFS.

(v) A CQ permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the CQ permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(vi) A legible copy of the CQ permit must be carried onboard an Amendment 80 vessel assigned to an Amendment 80 cooperative when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(3) *Amendment 80 Limited Access Fishery permit.* (i) An Amendment 80 limited access fishery permit is required for an Amendment 80 QS holder to catch, process, and receive Amendment 80 species assigned to the Amendment 80 limited access fishery, or use halibut and crab PSC assigned to the Amendment 80 limited access fishery. An Amendment 80 limited access fishery permit is issued annually to an Amendment 80 QS holder who has submitted:

(A) A timely and complete application for the Amendment 80 limited access fishery as described at § 679.91(b)(4) that is approved by NMFS; and

(B) A timely and complete EDR for all Amendment 80 QS permits held by that person as described under § 679.94.

(ii) An Amendment 80 limited access fishery permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the Amendment 80 limited access fishery permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the Amendment 80 limited access fishery permit must be carried onboard an Amendment 80 vessel assigned to the Amendment 80 limited access fishery when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

4. In § 679.5, paragraphs (n)(1) and (n)(2) are removed; paragraphs (n)(3) and (n)(4) are redesignated as paragraphs (n)(1) and (n)(2), respectively; and paragraph (s) is added to read as follows:

§ 679.5 Recordkeeping and Reporting (R&R).

* * * * *

(s) *Amendment 80 Program*—(1) *General.* The owners and operators of Amendment 80 vessels must comply with the applicable recordkeeping and reporting requirements of this section. All owners of Amendment 80 vessels must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook-DCPL.* Operators of Amendment 80 vessels must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Amendment 80 Program landings and production.

(3) *Check-in/check-out report, processors.* Operators or managers of an Amendment 80 vessel must submit check-in/check-out reports as described in paragraph (h) of this section.

(4) *Weekly production report (WPR).* Operators of Amendment 80 vessels that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(5) *Product transfer report (PTR), processors.* Operators of Amendment 80 vessels must submit a PTR as described in paragraph (g) of this section.

(6) *Annual Amendment 80 cooperative report*—(i) *Applicability.* An Amendment 80 cooperative issued a CQ permit must submit annually to the Regional Administrator an Amendment 80 cooperative report detailing the use of the cooperative's CQ.

(ii) *Time limits and submittal.* (A) The annual Amendment 80 cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format; by fax: 907–586–7557; or by mail sent to the Regional Administrator, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668; and

(B) The annual Amendment 80 cooperative report for fishing activities under a CQ permit issued for the prior calendar year must be received by the Regional Administrator not later than 1700 hours A.l.t. on March 1 of each year.

(iii) *Information required.* The annual Amendment 80 cooperative report must include at a minimum:

(A) The cooperative's actual retained and discarded catch of CQ and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;

(B) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(C) A description of any actions taken by the cooperative against specific members in response to a member that exceeded the amount of CQ that the member was assigned to catch for the Amendment 80 cooperative.

(7) *Vessel monitoring system (VMS) requirements* (see § 679.28(f)).

5. In § 679.7, remove and reserve paragraphs (d)(13), (d)(14), and (d)(16); revise paragraph (m) published at 71 FR 17381 on April 6, 2006; and add paragraph (o) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *Prohibitions specific to GRS.* (Effective January 20, 2008). It is unlawful for either the owner or operator of a catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI or an Amendment 80 cooperative to:

(1) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained under the GRS described at § 679.27(j).

(2) Fail to submit, submit inaccurate information, or intentionally submit false information, on any report, application or statement required under this part.

(3) Process or discard any catch not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed and each haul must be available to be sampled by an observer for species composition.

(4) Process any groundfish without an observer sampling station that complies with § 679.28(d).

(5) Combine catch from two or more hauls.

(6) Receive deliveries of unsorted catch at any time during a fishing year without complying with § 679.27(j)(5), if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 vessels.* (i) Use any vessel other than an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) Use an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited access sector.

(iii) Use an Amendment 80 vessel to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC in the BSAI for a calendar year if that Amendment 80 vessel is not assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery.

(2) *Amendment 80 LLP license.* Designate an Amendment 80 vessel on any groundfish LLP license other than an Amendment 80 LLP license.

(3) *Amendment 80 QS permit.* (i) Hold an Amendment 80 QS permit if that person does not hold an Amendment 80 LLP license.

(ii) Hold an Amendment 80 QS permit that is assigned to an Amendment 80 vessel under § 679.4(o)(1) if that person is not designated as the owner of that Amendment 80 vessel by an abstract of title or USCG documentation.

(4) *Amendment 80 cooperatives.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to an Amendment 80 cooperative for a calendar year to catch, process, or receive any Amendment 80 species, crab PSC, or halibut PSC not assigned to that Amendment 80 cooperative during that calendar year.

(ii) Catch, process, or receive Amendment 80 species assigned to an Amendment 80 cooperative in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 CQ permit onboard.

(iii) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained by an Amendment 80 cooperative under the GRS described at § 679.27(j).

(iv) For an Amendment 80 cooperative to catch any Amendment 80 species, crab PSC, or halibut PSC in excess of the CQ permit amounts assigned to that Amendment 80 cooperative.

(5) *Amendment 80 limited access fishery.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit assigned to the Amendment 80 limited access fishery for a calendar year to catch, process, or receive any Amendment 80 species, crab PSC, or halibut PSC not assigned to the Amendment 80 limited access sector during that calendar year.

(ii) Catch, process, or receive Amendment 80 species assigned to the Amendment 80 limited access fishery in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 limited access fishery permit onboard.

(6) *Catch monitoring.* (i) Operate an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive fish in the BSAI or adjacent waters opened by the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

(ii) Operate an Amendment 80 vessel that is subject to a sideboard limit detailed at § 679.92(b) and (c), as applicable, in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (d).

(7) *Use caps.* Exceed the use caps that apply under § 679.92(a).

(8) *Economic data report (EDR):* Fail to submit a timely and complete EDR as described under § 679.94.

6. In § 679.20:

a. Paragraphs (a)(7)(i), (a)(7)(ii), (a)(7)(iii)(B), are removed and reserved;

b. Paragraph (a)(7)(iv) is added and reserved;

c. Paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(iv), and (a)(8)(v) are added;

d. Paragraph (a)(8)(ii) is revised;

e. Paragraphs (a)(10) and (a)(11) are redesignated as paragraphs (a)(11) and (a)(12), respectively;

f. New paragraph (a)(10) is added;

g. Paragraphs (b)(1)(i) and (ii) are revised and paragraphs (b)(1)(iii) and (iv) are removed; and

h. Paragraphs (d)(1)(v) and (d)(1)(vi) are added.

The additions and revisions read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(v) *ITAC allocation to the Amendment 80 sector.* A percentage of the Pacific cod TAC, after subtraction of the CDQ reserve, will be allocated as ITAC to the Amendment 80 sector as described in Table 33 to this part. Separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery are described under § 679.91. The allocation of Pacific cod to the Amendment 80 sector will be further divided into seasonal apportionments as described under paragraph (a)(7)(iii)(A)(*1*)(*ii*) of this section.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (1) The

amount of Pacific cod listed on a CQ permit that is assigned for use in the A season may be used in the B or C season.

(*2*) The amount of Pacific cod that is listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(*3*) The amount of Pacific cod listed on a CQ permit that is assigned for use in the C season may not be used in the A or B season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(*2*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(*3*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the C season may not be harvested in the A or B season.

(vi) *ITAC rollover to Amendment 80 cooperatives.* If during a fishing year, the Regional Administrator determines that a portion of the Pacific cod TAC is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Pacific cod to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(8) * * *

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

* * * * *

(iv) *Amendment 80 sector allocation.* The allocation of Atka mackerel ITAC to the Amendment 80 sector is established in Table 32 to this part. The allocation of Atka mackerel ITAC to the Amendment 80 sector will be further divided into seasonal apportionments under § 679.23(e)(3), and separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (*1*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the A season may be used in the B season.

(*2*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(*2*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(v) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of Atka mackerel ITAC assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Table 32 to this part.

(B) *BSAI trawl limited access sector incidental catch allowance and ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the Atka mackerel incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Atka mackerel directed fishing allowance to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(10) *Amendment 80 species except Pacific cod and Atka mackerel*—(i) *ITAC allocation to the Amendment 80 and BSAI trawl limited access sectors.* The remainder of the TACs for each Amendment 80 species other than Atka mackerel and Pacific cod, after subtraction of the CDQ reserve and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(ii) *Amendment 80 sector ITAC.* The allocation of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod to the Amendment 80 sector is established in Tables 33 and 34 to this part. The allocation of these species to the Amendment 80 sector will be further divided into separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(iii) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Tables 33 and 34 to this part.

(B) *BSAI trawl limited access sector ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector for each Amendment 80 species other than Atka mackerel and Pacific cod is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve and the ''other species'' category. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve or the ''other species'' category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the ''other species'' category.

(ii) *CDQ reserves*—(A) *Pollock CDQ reserves*—(*1*) *Bering Sea.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve as a directed fishing allowance.

(*2*) *Aleutian Islands subarea and Bogoslof District.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TACs will be allocated to a CDQ reserve as a directed fishing allowance unless the Aleutian Islands subarea or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and

incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under paragraph (a)(5)(i)(A)(*1*) of this section.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the hook-and-line or pot gear allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

(C) C*DQ reserves for Amendment 80 species.* An amount equal to 10.7 percent of the BSAI TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod will be allocated to a CDQ reserve for each of these species by management area, subarea, or district.

(D) *CDQ reserves for other groundfish species.* An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecific reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(E) If the groundfish harvest specifications required by paragraph (c) of this section change a TAC category allocated to a CDQ reserve under paragraphs (b)(ii)(A) through (D) of this section by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in paragraphs (b)(ii) (A) through (D) of this section will apply to the new TAC categories.

* * * * *

(d) * * *

(1) * * *

(v) *Amendment 80 GOA sideboard limits—GOA groundfish.* (A) If the Regional Administrator determines that a GOA sideboard limit for a GOA groundfish species as described under Table 37 to this part is sufficient to support a directed fishing allowance for that species, the Regional Administrator may establish a directed fishing allowance for the species applicable only to Amendment 80 vessels subject to the GOA groundfish sideboard limit.

(B) If the Regional Administrator determines that a GOA groundfish sideboard limit as described under Table 37 to this part is insufficient to support a directed fishing allowance by Amendment 80 vessels for that species, then the Regional Administrator may set the directed fishing allowance to zero for that species for Amendment 80 vessels.

(C) Upon determining that a GOA sideboard limit as described under Table 37 to this part for a species is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for that species by the Amendment 80 vessels to which the GOA sideboard limit applies.

(vi) *Amendment 80 GOA sideboard limits—halibut PSC.* (A) If the Regional Administrator determines that an GOA sideboard limit for halibut PSC is sufficient to support a directed fishery for a species or species group, management area, and season specified in Table 38 to this part, then the Regional Administrator may establish a halibut PSC sideboard limit for that species or species group, management area, and season applicable to the Amendment 80 vessels to which the halibut PSC limit applies.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a species or species group, management area, and season as specified in Table 38 to this part then the Regional Administrator may set the halibut PSC sideboard limit for that species or species group to zero for the Amendment 80 vessels to which the halibut PSC limit applies.

(C) Upon determining that a halibut PSC sideboard limit for a species or species group, management area, and season as specified in Table 38 to this part is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for specific species or species group by the Amendment 80 vessels to which the halibut PSC limit applies as follows:

(*1*) If the halibut PSC sideboard limit is reached for the deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) for a season, then NMFS will close directed fishing in the GOA for all species in the deep-water species fishery except northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA for that season.

(*2*) If the halibut PSC sideboard limit is reached for the shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) for a season, then NMFS will close directed fishing in the GOA for all species in the shallow-water species fishery for that season.

* * * * *

7. In § 679.21, paragraphs (e)(1)(i), (e)(3)(i), (e)(3)(ii) heading, (e)(3)(ii)(A), (e)(3)(ii)(B)(*2*), and (e)(3)(iv) introductory text are revised, and paragraph (e)(3)(vi) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(i) *PSQ reserve.* The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(A) *Crab PSQ.* 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (iv) of this section.

(B) *Halibut PSQ.* (*1*) 276 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section in each year for 2008 and 2009.

(*2*) 326 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section effective in 2010 and each year thereafter.

(C) *Salmon PSQ*—(*1*) *Chinook salmon.* 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(*2*) *Non-Chinook salmon.* 10.7 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

* * * * *

(3) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(ii) through (viii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the BSAI, other than vessels fishing under a CQ permit assigned to an Amendment 80 cooperative, the PSC limits for red king crab, *C. bairdi, C. opilio,* and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) * * *

(*2*) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under paragraph (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(ii) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the

RKCSS will not exceed an amount equivalent to 25 percent of the red king crab PSC allowance and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

* * * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits among fisheries, other than PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(vi) *Amendment 80 sector bycatch limitations.* (A) Halibut and crab bycatch limits for the Amendment 80 sector in the BSAI will be established according to the procedure and formulae set out in § 679.91(d) through (f); and

(B) Halibut and crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80 vessels to which the halibut and crab bycatch limits apply.

* * * * *

8. In § 679.27, paragraph (j) published at 71 FR 17381 on April 6, 2006, is revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(j) *Groundfish retention standard.* (Effective January 20, 2008)—(1) *Applicability.* (i) The operator of a catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(ii) An Amendment 80 cooperative and the members of an Amendment 80 cooperative must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(iii) No part of the GRS supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation for a catcher/processor not in an Amendment 80 cooperative.* For any fishing year, the percent of groundfish retained by each catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI will be calculated using the following equations:

$$\text{GFroundweight} = \sum_{i=1}^{n} \left(\text{PWspecies}_n / \text{PRRspecies}_n \right)$$

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

GFroundweight is the total annual round weight equivalent of all retained product weights for each IR/IU groundfish species.

PWspecies_n is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report required at § 679.5(i).

PRRspecies_n is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% is the groundfish retention percentage for a vessel calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF is the total groundfish round catch weight as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(3) *Percent of groundfish retained calculation for an Amendment 80 cooperative.* For each Amendment 80 cooperative, for any fishing year, the percent of groundfish retained by that Amendment 80 cooperative is based on the aggregate groundfish retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative and will be calculated using the following equations:

$$\text{GFroundweight} = \sum_{i=1}^{n} \left(\text{PWspecies}_n / \text{PRRspecies}_n \right)$$

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

GFroundweight is the total annual round weight equivalent of all retained product weights retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative for each IR/IU groundfish species.

PWspecies_n is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report for all Amendment 80 vessels assigned to that Amendment 80 cooperative required at § 679.5(i).

PRRspecies_n is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% is the groundfish retention percentage for an Amendment 80 cooperative calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF is the total groundfish round catch weight for all Amendment 80 vessels assigned to that Amendment 80 cooperative as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(4) *Minimum groundfish retention standard.* An Amendment 80 cooperative or a catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the annual minimum groundfish retention standard requirements displayed in the following table:

GROUNDFISH RETENTION STANDARD

Year	Annual GRS (percent)
2008	65
2009	75

GROUNDFISH RETENTION STANDARD—Continued

Year	Annual GRS (percent)
2010	80
2011 and each year after	85

(5) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI, must comply with observer coverage requirements as described at §§ 679.50(c)(6), and 679.7(m)(3) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch by an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must provide an observer sampling station as described at § 679.28(d) and the owner of the vessel must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and the location along the conveyer belt at which the observers collect their samples.

(6) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of an Amendment 80 vessel, or any other vessel required to comply with paragraph (j) of this section, must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and paragraph (j)(5) of this section at all times the vessel harvests or processes groundfish outside the BSAI.

(7) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of an Amendment 80 vessel, or any other vessel required to comply with this paragraph (j) at any time during a fishing year and who also receives deliveries of unsorted catch at any time during a fishing year must comply with this paragraph (j)(5) while processing deliveries of unsorted catch.

9. In § 679.28, paragraph (d)(8)(i) is revised; paragraph (h) is added and reserved; and paragraph (i) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(8) * * *

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov*) an Inspection Request for Observer Sampling Station available on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Business mailing address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name and name of contact person on vessel.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) Requested inspection date.

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(I) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(J) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

* * * * *

(i) *Bin monitoring*—(1) *Bin monitoring standards.* The vessel owner or operator must comply with the requirements specified in paragraph (i)(1)(i) of this section unless the vessel owner or operator has requested, and NMFS has approved, one of the monitoring options described at paragraph (i)(1)(ii) or (i)(1)(iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and either

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or

(E) The observer informs the vessel operator, or his designee, that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained sufficiently clear to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a

standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system must include at least one external USB (1.1 or 2.0) hard drive or other removable storage device approved by NMFS;

(C) The system uses commercially available software;

(D) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(E) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period;

(F) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(G) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(H) A 16-bit or better color monitor, for viewing activities within the tank in real time, is provided within the observer sampling station (or location where the observer sorts and weighs samples, if applicable). The monitor must:

(*1*) Have the capacity to display all cameras simultaneously;

(*2*) Be operating at all times when fish are in the tank;

(*3*) Be securely mounted at or near eye level;

(*4*) Provide the same resolution as specified in paragraph (i)(1)(iii)(F) of this section.

(I) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(J) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(*1*) The length and width (in pixels) of each image;

(*2*) The file type in which the data are recorded;

(*3*) The type and extent of compression;

(*4*) The frame rate at which the data will be recorded;

(*5*) The brand and model number of the cameras used;

(*6*) The brand, model, and specifications of the lenses used;

(*7*) A scale drawing of the location of each camera and its coverage area;

(*8*) The size and type of storage device;

(*9*) The type, speed, and operating system of any computer that is part of the system;

(*10*) The individual or company responsible for installing and maintaining the system;

(*11*) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(*12*) Any additional information requested by the Regional Administrator.

(K) Any change to the video system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (i)(1)(ii) or (i)(1)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel must use the monitoring option specified in paragraph (i)(1)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(2) *Who must have a bin monitoring option inspection?* A vessel owner or operator choosing to operate under the line of sight option (option 2) in paragraph (i)(1)(ii) of this section or the video option (option 3) in paragraph (i)(1)(iii) of this section must receive an annual bin monitoring option inspection.

(3) *How does a vessel owner arrange for a bin monitoring option inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov*) an Inspection Request for Bin Monitoring available on the NMFS Alaska Region Web site at (*http://www.fakr.noaa.gov*). Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(i) Name and signature of the person submitting the application, and the date of the application;

(ii) Business mailing address, telephone number, and fax number of the person submitting the application;

(iii) Whether the vessel has received a bin monitoring option inspection before, and if so, the date of the most recent inspection report;

(iv) Vessel name;

(v) Federal fishery permit number;

(vi) Location where the inspection is requested to occur, including street address and city; and

(vii) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(4) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(5) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (i)(1)(ii) or (i)(1)(iii) of this section. The vessel owner must maintain a current bin option inspection report onboard the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (i)(5). The bin monitoring option inspection report must be made available to the observer, NMFS personnel or to an authorized officer upon request.

10. In § 679.31:

a. Remove paragraphs (a)(2), (c), (f), and (g);

b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

c. In redesignated paragraph (a)(2), further redesignate paragraphs (1), (2),

and (3) introductory text, and (4) as paragraphs (a)(1)(i), (ii), (iii), and (iv), respectively;

d. In redesignated paragraph (a)(2)(iii), further redesignate paragraphs (i), (ii), (iii) and (iv) as paragraphs (a)(2)(iii)(A), (B), (C), and (D), respectively;

e. Add and reserve paragraph (b); and

f. Revise the section heading, the heading for paragraph (a) and paragraph (a)(1).

The additions and revisions read as follows:

§ 679.31 CDQ and PSQ reserves.

* * * * *

(a) *CDQ and PSQ reserves*—(1) *Groundfish CDQ reserves.* See § 679.20(b)(1)(ii).

* * * * *

11. In § 679.50, paragraphs (a), (c)(4)(i)(A), and paragraph (c)(6) published at 71 FR 17381 on April 6, 2006, are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs or fishing in certain areas. Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(5) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

Program	Catcher/ processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) CDQ Program	(c)(4)	(c)(4)	(c)(4)	(d)(5).
(2) AFA pollock	(c)(5)(i)(A) and (B)	(c)(1) through (3)	(c)(5)(i)(A)	(d)(6).
(3) Aleutian Islands pollock	(c)(5)(i)(C)	(c)(1) through (3)	(c)(5)(i)(C)	(d)(1) through (4).
(4) Rockfish Program	(c)(7)(i)	(c)(7)(ii)	N/A	(d)(7).
(5) Vessels fishing in the Red King Crab Savings Area	(c)(1)(vii)	(c)(1)(viii)	N/A	N/A.
(6) Vessels fishing in the Nearshore Bristol Bay Trawl Closure Area.	(c)(1)(ix)	(c)(1)(ix)	N/A	N/A.
(7) Vessels fishing in the HLA for Atka mackerel	(c)(1)(x)	(c)(1)(x)	N/A	N/A.
(8) Non-AFA trawl C/Ps fishing in the BSAI	(c)(6)	N/A	N/A	N/A.
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(c)(1) through (3), in GOA only.	(c)(1) through (3)	(c)(1) through (3)	(d)(1) through (4).

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) *CDQ groundfish fisheries (effective January 20, 2008)*—(*1*) *Catcher/processors using trawl gear.* A catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and groundfish CDQ fishing, except catcher/processors directed fishing for pollock CDQ, must comply with the observer coverage requirements at paragraph (c)(6)(i) of this section and the catch monitoring requirements in § 679.93(c).

(*2*) *Motherships.* A mothership that receives groundfish from catcher vessels using trawl gear and groundfish CDQ fishing, except catcher vessels directed fishing for pollock CDQ, must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section onboard the vessel, at least one of whom must be endorsed as a lead level 2 observer.

* * * * *

(6) *Non-AFA trawl catcher/processors (effective January 20, 2008)*—(i) *Catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI.* Catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(A) *Observer lead level 2 requirements.* At least one of the observers required under this paragraph (c)(6)(i) must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(6)(i)(B) of this section would otherwise preclude sampling as required.

(B) *Observer workload.* The time required for the observer to complete sampling, data recording, and data communication duties must not exceed 12 consecutive hours in each 24-hour period.

(ii) *Amendment 80 vessels in the GOA.* All Amendment 80 vessels fishing in the GOA, except the F/V GOLDEN FLEECE (USCG Documentation Number 609951) provided the F/V GOLDEN FLEECE is named on LLP license number LLG2524, must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

* * * * *

12. In § 679.64:

a. Revise section heading;

b. Revise paragraph (a)(2)(i);

c. Redesignate paragraphs (a)(4) through (a)(6) as paragraphs (a)(5) through (a)(7), respectively;

d. Add new paragraph (a)(4);

e. Revise paragraphs (a)(5) and (a)(6);

f. Add paragraph (a)(8);

g. Revise paragraph (b)(3)(i) heading;

h. Redesignate paragraph (b)(3)(iii) as paragraph (b)(3)(iv);

i. Add new paragraph (b)(3)(iii);

j. Revise paragraph (b)(4); and

k. Add new paragraph (b)(6).

The revisions and additions read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) * * *

(2) * * *

(i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in Sections 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by

the remainder of the Aleutian Islands Pacific ocean perch TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

* * * * *

(4) *Flathead sole, rock sole, and yellowfin sole.* The harvest limit for flathead sole, rock sole, and yellowfin sole will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(5) *Remaining groundfish species.* (i) Except as provided for in paragraphs (a)(1)(ii) through (a)(4) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(5)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(6) *What are the halibut and crab PSC sideboard limits*? The halibut and crab PSC bycatch limits specified for catcher/processors in the BSAI are listed in Tables 40 and 41 to this part.

* * * * *

(8) *Yellowfin sole sideboard limit exemption.* AFA catcher/processors will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

(b) * * *

(3) * * *

(i) *BSAI groundfish other than Amendment 80 species.*

* * * * *

(iii) *Amendment 80 species other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each Amendment 80 species other than BSAI Pacific cod will be equal to the aggregate retained catch of that Amendment 80 species from 1995 through 1997 by all AFA catcher vessels, divided by the sum of the TAC available to catcher vessels for that species or species group from 1995 through 1997, and multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year or season in which the harvest limit will be in effect.

(4) *How will halibut and crab PSC limits be calculated*?—(i) *BSAI.* The halibut and crab PSC bycatch limits specified for catcher vessels in the BSAI are listed in Tables 40 and 41 to this part.

(ii) *GOA.* The AFA catcher vessel PSC bycatch limit for halibut in the GOA will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

* * * * *

(6) *Yellowfin sole sideboard limit exemption.* AFA catcher vessels will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

* * * * *

13. In § 679.84, paragraphs (c)(7) and (c)(9) are revised to read as follows:

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(c) * * *

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

* * * * *

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

* * * * *

14. Subpart H, consisting of §§ 679.90 through 679.94, is added to read as follows:

Subpart H—Amendment 80 Program

Sec.
679.90 Allocation, use, and transfer of Amendment 80 QS permits.
679.91 Amendment 80 Program annual harvester privileges.
679.92 Amendment 80 Program use caps and sideboard limits.
679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.
679.94 Economic data report (EDR) for the Amendment 80 sector.

Subpart H—Amendment 80 Program

§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.27 Improved Retention/Improved Utilization Program, § 679.28 Equipment and operational requirements, § 679.31 CDQ and PSQ reserves, § 679.50 Groundfish Observer Program applicable through December 31, 2007, and § 679.64 Harvesting sideboard limits in other fisheries.

(a) *Issuance of Amendment 80 QS permits*—(1) *General.* NMFS will issue an Amendment 80 QS permit to a person who is eligible to receive Amendment 80 QS units as described in paragraph (a)(2) of this section and based on:

(i) The information contained in an approved application for Amendment 80 QS as described in paragraph (b) of this section;

(ii) The information contained in the Amendment 80 official record as described in paragraph (c) of this section;

(iii) The Amendment 80 QS permit allocation procedures as described in paragraph (d) of this section; and

(iv) In consideration of any use caps as described in § 679.92(a).

(2) *Eligibility to receive an Amendment 80 QS permit*—(i) *Owner of an Amendment 80 vessel.* A person may receive an Amendment 80 QS permit if:

(A) That person owns an Amendment 80 vessel at the time of application for

Amendment 80 QS as demonstrated on a title of abstract or USCG documentation;

(B) That person holds an Amendment 80 LLP license at the time of application for Amendment 80 QS;

(C) That person is a U.S. citizen;

(D) That person submits a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section; and

(E) That person is not eligible to receive an Amendment 80 QS permit under the provisions of paragraph (a)(2)(ii) of this section.

(ii) *Holder of an Amendment 80 LLP license*. A person may receive an Amendment 80 QS permit if:

(A) At the time of application for Amendment 80 QS that person holds the Amendment 80 LLP license originally assigned to an Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

(B) The actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108 has been clearly and unambiguously established and documented in written form in the application for Amendment 80 QS and that documentation is accepted by NMFS;

(C) The express terms of a written contract clearly and unambiguously provide that the owner(s) of that Amendment 80 vessel transferred all rights and privileges to use the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel;

(D) That person is a U.S. citizen; and

(E) That person has submitted a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section.

(b) *Application for Amendment 80 QS*—(1) *Submission*. A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application for Amendment 80 QS is not required to be resubmitted. An application for Amendment 80 QS may only be submitted to NMFS using any one of the following methods:

(i) *Mail*: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms*. Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline*. A completed application for Amendment 80 QS must be received by NMFS no later than 1700 hours A.l.t. on October 15 of the year prior to the fishing year for which the applicant is applying, or if sent by U.S. mail, postmarked by that time. Applications received or postmarked after the deadline will not be eligible to receive an Amendment 80 QS permit for the upcoming fishing year.

(4) *Contents of application*. A completed application must contain the following information:

(i) *Applicant identification*. (A) The applicant's name, NMFS person ID (if applicable), tax ID number, permanent business mailing address, business telephone number, business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) Indicate whether the applicant is applying as the owner of an Amendment 80 vessel or the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel;

(F) For an applicant claiming Amendment 80 legal landings associated with an Amendment 80 vessel, enter the following information for each Amendment 80 vessel: USCG documentation number of vessel on which Amendment 80 legal landings were caught and processed, vessel name, ADF&G vessel registration number, and LLP license held by that person at the time of application;

(G) If an Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, provide clear and unambiguous documentation in written form that the Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108; and

(H) If applicable, a copy of the express terms of a written contract held by the applicant that clearly and unambiguously indicates that the owner of the Amendment 80 vessel that has suffered has an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 has transferred all rights and privileges to use Amendment 80 legal landings and any resulting Amendment 80 QS or exclusive harvest privilege from that Amendment 80 vessel to the person holding the Amendment 80 LLP license originally assigned to that Amendment 80 vessel.

(ii) *Applicant signature and certification*. The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization for the designated representative signed by the applicant must accompany the application.

(5) *Application evaluation*. The Regional Administrator will evaluate applications received as specified in this paragraph (b)(5) of this section and compare all claims in an application with the information in the Amendment 80 official record. Application claims that are consistent with information in the Amendment 80 official record will be approved by the Regional Administrator. Application claims that are inconsistent with the Amendment 80 official record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (b)(4) of this section, will be provided a single 30-day evidentiary period in which to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Amendment 80 official record. An applicant who submits claims that are inconsistent with information in the Amendment 80 official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an IAD of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(c) *Amendment 80 official record*—(1) *Use of the Amendment 80 official record.* The Amendment 80 official record will contain all information used by the Regional Administrator to determine eligibility to participate in the Amendment 80 Program, assign QS, and any other privileges or limits for the Amendment 80 Program.

(2) *Amendment 80 official record presumed to be correct.* The Amendment 80 official record is presumed to be correct. An applicant to participate in the Amendment 80 Program has the burden to prove otherwise.

(3) *Documentation is used to establish the amount of Amendment 80 legal landings.* Only Amendment 80 legal landings as defined in § 679.2 will be used to assign Amendment 80 QS units to an Amendment 80 QS permit unless an Amendment 80 vessel has no Amendment 80 legal landings in which case Amendment 80 QS units will be allocated to the Amendment 80 QS permit derived from that Amendment 80 vessel according to the procedures established under paragraphs (d)(1)(iii) and (iv) of this section.

(4) *Assignment of Amendment 80 legal landings.* An Amendment 80 legal landing is assigned only to the Amendment 80 vessel that was used to make that Amendment 80 legal landing.

(d) *Assigning an Amendment 80 QS permit to an Amendment 80 QS holder*—(1) *Amendment 80 QS units derived from an Amendment 80 vessel and issued to an Amendment 80 QS holder.* NMFS will assign a specific amount of Amendment 80 QS units to each Amendment 80 QS permit based on the Amendment 80 legal landings of each Amendment 80 vessel for each Amendment 80 species in each management area for that Amendment 80 species as listed in Table 32 to this part, using information from the Amendment 80 official record according to the following procedures:

(i) *All Amendment 80 species.* (A) For each Amendment 80 species, sum the Amendment 80 legal landings for each Amendment 80 vessel in all management areas for that Amendment 80 species listed in Table 32 to this part for each calendar year from 1998 through 2004.

(B) Select the five calendar years that yield the highest amount of Amendment 80 legal landings of that Amendment 80 species in all management areas for that Amendment 80 species listed in Table 32 to this part, including zero metric tons if necessary.

(C) Sum the Amendment 80 legal landings of the highest five years for an Amendment 80 species. This yields the Highest Five Years for that Amendment 80 species.

(D) Divide the Highest Five Years for an Amendment 80 species in paragraph (d)(1)(i)(C) of this section for an Amendment 80 vessel by the sum of all Highest Five Years for all Amendment 80 vessels for that Amendment 80 species based on the Amendment 80 official record for that Amendment 80 species as presented in the following equation:

Highest Five Years / ∑ All Highest Five Years = Percentage of the Total.

The result (quotient) of this equation is the Percentage of the Total for that Amendment 80 vessel for that Amendment 80 species.

(ii) *Aleutian Islands Pacific ocean perch and BSAI Pacific cod.* Multiply the Percentage of the Total for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod Pacific cod.

(iii) *BSAI rock sole and BSAI yellowfin sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.5 percent of the Percentage of the Total for BSAI rock sole and BSAI yellowfin sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section for BSAI rock sole and BSAI yellowfin sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel x (1 − ∑Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI rock sole and BSAI yellowfin sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI rock sole or BSAI yellowfin sole.

(iv) *BSAI flathead sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.1 percent of the Percentage of the Total for BSAI flathead sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings during 1998 through 2004 will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section for BSAI flathead sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel x (1 − ∑Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI flathead sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI flathead sole.

(v) *BSAI Atka mackerel.* (A) Multiply the Percentage of the Total for that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for BSAI Atka mackerel as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI Atka mackerel.

(B) If an Amendment 80 vessel is an Amendment 80 non-mackerel vessel, determine the percentage of the Amendment 80 QS pool that is assigned to each Atka mackerel management area listed in Table 32 to this part in each year from 1998 through 2004 for that Amendment 80 non-mackerel vessel based on the percentage of Amendment 80 legal landings in that Atka mackerel management area from 1998 through 2004 for that Amendment 80 non-mackerel vessel.

(C) The sum of the Amendment 80 QS units allocated to all Amendment 80 non-mackerel vessels is the Total Amendment 80 non-mackerel QS pool.

(D) The sum of the Amendment 80 QS units allocated to all Amendment 80 mackerel vessels is the Total Amendment 80 mackerel QS pool.

(2) *Assigning Amendment 80 QS units to an Amendment 80 permit.* Once the Regional Administrator determines the amount of Amendment 80 QS units to be issued for an Amendment 80 species derived from an Amendment 80 vessel based on the criteria described in paragraphs (b) through (d) of this section, NMFS will assign that amount of Amendment 80 QS units for each Amendment 80 species as an Amendment 80 QS permit to the Amendment 80 QS holder as follows:

(i) *Amendment 80 vessel owner.* NMFS will issue an Amendment 80 QS permit for each Amendment 80 vessel to the owner of that Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(i) of this section; or

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an Amendment 80 LLP license originally assigned to an Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

(e) *Transfers of Amendment 80 QS permits*—(1) *Non-severability of Amendment 80 QS permits.* (i) An Amendment 80 QS holder may not transfer an Amendment 80 QS permit to another person unless all Amendment 80 QS units for all Amendment 80 species on that Amendment 80 QS permit are transferred in their entirety to the same person at the same time; and

(ii) Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license and a person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

(2) *Transfer of an Amendment 80 LLP/QS license.* A person holding an Amendment 80 LLP/QS license may transfer that Amendment 80 LLP/QS license to another person only under the provisions of § 679.4(k)(7).

(3) *Transfers of Amendment 80 QS permits.* A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person only by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(4) *Assigning an Amendment 80 QS permit to an Amendment 80 LLP license.* An Amendment 80 vessel owner holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel only by submitting an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(f) *Application to transfer an Amendment 80 QS permit*—(1) *General.* An Amendment 80 QS holder who wishes to transfer an Amendment 80 QS permit must submit a complete application that is approved by NMFS. This application may only be submitted to NMFS using the any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Application*—(i) *Transferor information*—(A) Transferor identification. The transferor's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Type of transfer.* (*1*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to another person; or

(*2*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel as listed in Table 31 to this part.

(C) *Amendment 80 QS permit.* Indicate the Amendment 80 QS permit to be transferred.

(D) *Information for transfers of Amendment 80 QS permit to another person.* If transferring an Amendment 80 QS permit assigned to an Amendment 80 vessel owner to another person, attach abstract of title or USCG documentation that clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit would be assigned.

(E) *Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license.* If transferring Amendment 80 QS assigned to an Amendment 80 vessel owner to the Amendment 80 LLP license originally assigned to that Amendment 80 vessel, provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel for which that Amendment 80 LLP license was originally assigned is no longer able to be used in the Amendment 80 Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

(F) *Certification of transferor.* The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Transferee information*—(A) *Transferee identification.* The transferee's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Certification of transferee.* The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by an designated representative, then explicit authorization signed by the applicant must accompany the application.

§ 679.91 Amendment 80 Program annual harvester privileges.

(a) *Assigning an Amendment 80 QS permit to an Amendment 80 cooperative or Amendment 80 limited access fishery*—(1) *General.* (i) Each calendar year, an Amendment 80 QS holder must either be designated on a timely and complete application for CQ, or file an application for the Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this

section in order to catch, process, or receive Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) NMFS will assign all Amendment 80 QS permit(s), Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to an Amendment 80 cooperative if that Amendment 80 QS holder is designated as a member of an Amendment 80 cooperative on an application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(iii) NMFS will assign all Amendment 80 QS permit(s), Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to the Amendment 80 limited access fishery if that Amendment 80 QS holder is designated on an application for the Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this section.

(2) *Amendment 80 QS permits issued after issuance of CQ or ITAC.* Any Amendment 80 QS permits, or Amendment 80 QS units on an Amendment 80 QS permit, assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for a calendar year will not result in any additional:

(i) CQ being issued to an Amendment 80 cooperative if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to an Amendment 80 cooperative for that calendar year; or

(ii) ITAC being issued to the Amendment 80 limited access fishery if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to the Amendment 80 limited access fishery for that calendar year.

(3) *Failure to submit an application for an Amendment 80 fishery.* If an Amendment 80 QS holder is not designated on a timely and complete application for CQ or application for an Amendment 80 limited access fishery that is approved by the Regional Administrator as described under paragraph (b) of this section, the Regional Administrator will not assign that Amendment 80 QS holder's Amendment 80 QS permit(s), Amendment 80 vessel(s), or Amendment 80 LLP license(s) to an Amendment 80 cooperative or the Amendment 80 limited access fishery for the applicable calendar year.

(b) Application for CQ and Application for the Amendment 80 limited access fishery—(1) *General.* An application for CQ or an application for the Amendment 80 limited access fishery may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) Application forms. Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the calendar year for which the applicant is applying, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ*—(i) *Amendment 80 cooperative identification.* The Amendment 80 cooperative's legal name; tax ID number, the type of business entity under which the Amendment 80 cooperative is organized; the state in which the Amendment 80 cooperative is legally registered as a business entity; permanent business address; business telephone number; business fax number; e-mail address (if available); and printed name of the Amendment 80 cooperative's designated representative.

(ii) *Identification of Amendment 80 QS permit holders and ownership documentation.* Full name of each Amendment 80 cooperative member; NMFS person ID of each member; Amendment 80 QS permit number(s); the names of all persons, to the individual level, holding an ownership interest in the Amendment 80 QS permit(s) assigned to the Amendment 80 cooperative and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(iii) *Identification of Amendment 80 cooperative member vessels and Amendment 80 LLP licenses.* Vessel name; ADF&G vessel registration number; USCG documentation number; and Amendment 80 LLP license number.

(iv) *Identification of vessels on which the CQ issued to the Amendment 80 cooperative will be used.* Vessel name, ADF&G vessel registration number, and USCG documentation number.

(v) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether each member of the Amendment 80 cooperative has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vi) *Certification of cooperative authorized representative.* The cooperative's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Explicit authorization to complete the application on behalf of the members of the cooperative must accompany the application.

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ.

(5) *Application for the Amendment 80 limited access fishery*—(i) *Applicant identification.* The applicant's name, NMFS Person ID (if applicable), tax ID number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(ii) *Amendment 80 vessel identification.* The name, ADF&G vessel registration number(s), and USCG documentation number(s) of the Amendment 80 vessel(s) owned by the applicant.

(iii) *Amendment 80 LLP identification.* The Amendment 80 LLP license number(s) held by the applicant.

(iv) *Amendment 80 QS permit information.* The Amendment 80 QS permit number(s) held by the applicant.

(v) *Amendment 80 QS ownership documentation.* The names of all persons, to the individual person level, holding an ownership interest in the Amendment 80 QS permit(s) held by the applicant and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(vi) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether the applicant has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(c) *Allocations of Amendment 80 species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of Amendment 80 species that will be assigned to the BSAI trawl limited access sector and the Amendment 80 sector. For participants

in the Amendment 80 sector, the tonnage of fish will be further assigned between Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Calculation*—(i) *Determination of TAC and ITAC.* NMFS will determine the TAC and ITAC for each Amendment 80 species in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of ITAC.* The annual apportionment of ITAC for each Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector in a given calendar year is established in Tables 33 and 34 to this part.

(3) *Allocation of CQ to Amendment 80 cooperatives*—(i) *General.* The amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the ITAC for that Amendment 80 species in that management area. Once ITAC for an Amendment 80 species in a management area is assigned to an Amendment 80 cooperative, it is issued as CQ specific to that Amendment 80 cooperative.

(ii) *CQ allocation for Amendment 80 species except BSAI Atka mackerel.* The amount of CQ for each Amendment 80 species except BSAI Atka mackerel that is assigned to a Amendment 80 cooperative is expressed algebraically as follows:

CQ in a management area = [(Amendment 80 sector ITAC in a management area) x (Amendment 80 QS units assigned to that Amendment 80 cooperative / Amendment 80 QS pool)].

(iii) *CQ allocation for BSAI Atka mackerel.* The amount of CQ for BSAI Atka mackerel that is assigned to each Amendment 80 cooperative in each management area is determined by the following procedure:

(A) Determine the amount of non-mackerel ITAC in each management area using the following equation:

Non-mackerel ITAC in a management area = (Amendment 80 non-mackerel QS units designated for that management area / Total Atka mackerel QS pool) x Amendment 80 sector ITAC in all management areas.

(B) Determine the amount of mackerel ITAC in each management area using the following equation:

Mackerel ITAC in a management area = Amendment 80 sector ITAC in that management area—Non-mackerel ITAC in that management area.

(C) Determine the amount of non-mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Non-mackerel CQ assigned to that Amendment 80 cooperative = (Amendment 80 non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative / Amendment 80 non-mackerel QS pool in that management area) x Non-mackerel ITAC for that management area.

(D) Determine the amount of mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Mackerel CQ in a management area = (Mackerel QS units assigned to that Amendment 80 cooperative / Mackerel QS pool) x Mackerel ITAC in that management area.

(E) The total amount of Atka mackerel CQ assigned to an Amendment 80 cooperative for a management area is equal to the sum of paragraphs (c)(3)(iii)(C) and (D) of this section.

(4) *Amendment 80 limited access fishery.* The amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area.

(d) *Allocations of halibut PSC*—(1) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 sector.* The amount of halibut PSC assigned to the Amendment 80 sector for each calendar year is specified in Table 35 to this part. That amount of halibut PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 halibut PSC assigned to an Amendment 80 cooperative.* For each calendar year, the amount of Amendment 80 halibut PSC assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of halibut PSC established in Table 35 to this part by the percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the halibut PSC apportionment for that Amendment 80 species established in paragraph (d)(2)(i) of this section by the percentage of the Amendment 80 QS pool assigned to an Amendment 80 cooperative for that Amendment 80 species established in paragraph (d)(2)(ii) of this section. This yields the amount of halibut PSC apportioned to that cooperative for that Amendment 80 species.

(iv) For each Amendment 80 cooperative, sum the results of paragraph (d)(2)(iii) of this section for all Amendment 80 species. This yields the amount of Amendment 80 halibut PSC assigned to that Amendment 80 cooperative as CQ.

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section.

(4) *Use of Amendment 80 halibut PSC in the Amendment 80 sector*—(i) *Amendment 80 halibut PSC assigned to a Amendment 80 cooperative.* An amount of Amendment 80 halibut PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by an Amendment 80 cooperative must be deducted from the amount of halibut PSC CQ on its CQ permit. Amendment 80 halibut PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Halibut PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 halibut PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal

fishing season. Any halibut PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of halibut PSC assigned to the Amendment 80 limited access fishery. Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Halibut PSC assigned to the BSAI trawl limited access sector.* Halibut PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Halibut PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(e) *Allocations of crab PSC*—(1) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 sector.* The amount of Amendment 80 crab PSC assigned to the Amendment 80 sector for each Amendment 80 crab PSC in a calendar year is specified in Table 35 to this part. That amount of Amendment 80 crab PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* For each calendar year, for each Amendment 80 crab PSC, the amount assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of an Amendment 80 crab PSC established in Table 35 to this part by the percentage of the Amendment 80 crab PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the Amendment 80 crab PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the Amendment 80 crab PSC apportionment to that Amendment 80 species established in paragraph (e)(2)(i) of this section by the percentage of the Amendment 80 QS pool held by an Amendment 80 cooperative as established in paragraph (e)(2)(ii) of this section. This yields the amount of Amendment 80 crab PSC apportioned to that Amendment 80 cooperative for that Amendment 80 species.

(iv) For each Amendment 80 crab PSC, sum the results of paragraph (e)(2)(iii) for all Amendment 80 species. This yields the amount of that Amendment 80 crab PSC assigned to that Amendment 80 cooperative.

(3) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery.* The amount of each Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is equal to the amount of that Amendment 80 crab PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of that crab PSC that has been assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (e)(2)(iv) of this section.

(4) U*se of Amendment 80 crab PSC in the Amendment 80 sector*—(i) *Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* An amount of Amendment 80 crab PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by an Amendment 80 cooperative must be deducted from the amount of Amendment 80 crab PSC CQ on its CQ permit. Amendment 80 crab PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Amendment 80 crab PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 crab PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery. Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Amendment 80 crab PSC assigned to the BSAI trawl limited access sector.* Amendment 80 crab PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Amendment 80 crab PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(f) *Rollover—Annual reallocation of an Amendment 80 species ICA or ITAC, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives*—(1) *General.* The Regional Administrator may reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. Any reallocation will result in an amended CQ permit for each Amendment 80 cooperative. The timing of a reallocation will be at the discretion of the Regional Administrator.

(2) *Factors considered.* The Regional Administrator will consider the following factors when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives:

(i) The risk of biological harm to a groundfish species or species group;

(ii) The risk of socioeconomic harm to other domestic fishery participants;

(iii) The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;

(iv) Current catch and PSC use in the BSAI trawl limited access sector;

(v) Historic catch and PSC use in the BSAI trawl limited access sector;

(vi) Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;

(vii) Administrative requirements to reissue CQ permits; and

(viii) Any other relevant biological, socioeconomic, or administrative factors.

(3) *Rollover of Amendment 80 species.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of Amendment 80 species to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives x (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative / ∑ CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

(4) Rollover of halibut PSC. If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the halibut PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of halibut PSC to each Amendment 80 cooperative according to the following procedure:

(i) Multiply the amount of the halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC available for allocation to Amendment 80 cooperatives; and

(ii) Determine the halibut PSC CQ issued to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Maximum amount of halibut PSC available for reallocation to Amendment 80 cooperatives × (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative / ∑ halibut PSC CQ initially assigned to all Amendment 80 cooperatives).

(5) *Rollover of crab PSC.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of a crab PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of crab PSC to each Amendment 80 cooperative according to the following formula:

Amount of CQ issued to an Amendment 80 cooperative = Amount of that crab PSC available for allocation to Amendment 80 cooperatives × (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative / ∑ that crab PSC CQ initially assigned to all Amendment 80 cooperatives).

(g) *CQ transfer applications*—(1) *General.* An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Amendment 80 cooperatives may transfer CQ during a calendar year with the following restrictions:

(i) An Amendment 80 cooperative may only transfer CQ to another Amendment 80 cooperative;

(ii) An Amendment 80 cooperative may only receive CQ from another Amendment 80 cooperative; and

(iii) An Amendment 80 cooperative receiving Amendment 80 species CQ by transfer must assign that Amendment 80 species CQ to a member(s) of the Amendment 80 cooperative for the purposes of use cap calculation as established under § 679.92(a).

(2) *Application for CQ transfer.* NMFS will notify the transferor and transferee once the application for CQ transfer has been received and approved. A transfer of CQ is not effective until approved by NMFS. An application for CQ transfer may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(3) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(4) *Contents of application.* A completed application for CQ transfer requires that the following information be provided:

(i) *Identification of transferor.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative; permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative, permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferee. A temporary mailing address for each transaction may also be provided.

(iii) *CQ to be transferred.* Identify the type and amount of Amendment 80 species, or Amendment 80 PSC CQ to be transferred, and the number of QS units from which this CQ is derived.

(iv) *Identification of Amendment 80 cooperative member.* Enter the name and NMFS Person ID of the member(s) of the receiving Amendment 80 cooperative to whose use cap Amendment 80 species CQ will be assigned, and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps established under the Amendment 80 Program under § 679.92(a).

(v) *Certification of transferor.* The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferor's designated representative must be entered.

(vi) *Certification of transferee.* The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferee's designated representative must be entered.

(5) *CQ amounts applied to a member of an Amendment 80 cooperative.* (i) Amendment 80 species CQ must be assigned to a member of the Amendment 80 cooperative receiving the CQ for purposes of use cap calculations. No member of an Amendment 80 cooperative may exceed the CQ use cap applicable to that member.

(ii) For purposes of Amendment 80 species CQ use cap calculations, the total amount of Amendment 80 species CQ held or used by a person is equal to all metric tons of Amendment 80 species CQ derived from all Amendment 80 QS units on all Amendment 80 QS permits held by that person and assigned to the Amendment 80 cooperative and all metric tons of Amendment 80 species CQ assigned to that person by the Amendment 80 cooperative from approved transfers.

(iii) The amount of Amendment 80 QS units held by a person, and CQ derived from those Amendment 80 QS units, is calculated using the individual and collective use cap rule established in § 679.92(a).

(h) *Amendment 80 cooperative*—(1) *General.* This section governs the formation and operation of Amendment 80 cooperatives. The regulations in this section apply only to Amendment 80 cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of Amendment 80 cooperatives should consult legal counsel before commencing any activity if the members

are uncertain about the legality under the antitrust laws of the Amendment 80 cooperative's proposed conduct. Membership in an Amendment 80 cooperative is voluntary. No person may be required to join an Amendment 80 cooperative. Upon receipt of written notification that a person is eligible and wants to join an Amendment 80 cooperative, that Amendment 80 cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the agreement or contract governing the conduct of the Amendment 80 cooperative. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person may join that Amendment 80 cooperative as a member upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license. Members may leave an Amendment 80 cooperative, but any CQ contributed by the Amendment 80 QS permit(s) held by that member will remain with that Amendment 80 cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* An Amendment 80 cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each Amendment 80 cooperative must appoint an individual as the designated representative to act on the Amendment 80 cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the Amendment 80 cooperative. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf;

(iii) Each Amendment 80 cooperative must submit a timely and complete application for CQ; and

(iv) Each Amendment 80 cooperative must meet the mandatory requirements established in paragraphs (h)(3) and (4) of this section applicable to that Amendment 80 cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a Amendment 80 cooperative:

(i) Who may join an Amendment 80 cooperative?	Any Amendment 80 QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not Amendment 80 QS holders may be employed by, or serve as the designated representative of a Amendment 80 cooperative, but are not members of the Amendment 80 cooperative.
(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?	Any combination of at least nine Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?	At least three Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.
(iv) Is there a minimum amount of Amendment 80 QS units that must be assigned to an Amendment 80 cooperative for it to be allowed to form?	No.
(v) What is allocated to the Amendment 80 cooperative?	CQ for each Amendment 80 species, crab PSC, and halibut PSC, based on the amount of Amendment 80 QS units assigned to the cooperative.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the Amendment 80 cooperative have an exclusive privilege to collectively catch and use this CQ, or an Amendment 80 cooperative can transfer all or a portion of this CQ to another Amendment 80 cooperative.
(vii) Is there a period in a calendar year during which designated vessels must catch CQ?	Yes, any Amendment 80 vessel designated to catch CQ for an Amendment 80 cooperative is limited to catching CQ during the period beginning on 1200 hours A.l.t. on January 20 through 2400 hours A.l.t. on December 31.
(viii) Can any vessel catch an Amendment 80 cooperative's CQ?	No, only Amendment 80 vessels that are assigned to that Amendment 80 cooperative for that calendar year in the application for CQ may catch and process the CQ assigned to that Amendment 80 cooperative.
(ix) Can a member of an Amendment 80 cooperative transfer CQ individually without the approval of the other members of the Amendment 80 cooperative?	No, only the designated representative of the Amendment 80 cooperative, and not individual members, may transfer its CQ to another Amendment 80 cooperative; and only if that transfer is approved by NMFS as established under paragraph (g) of this section.
(x) Are GOA sideboard limits assigned to specific persons or Amendment 80 cooperatives?	No, GOA sideboard limits are not assigned to specific persons or Amendment 80 cooperatives. GOA sideboard limits are assigned to the Amendment 80 sector.
(xi) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to more than one Amendment 80 cooperative in a calendar year?	No, an Amendment 80 QS holder holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels may assign those permits, licenses, or vessels to only one Amendment 80 cooperative in a calendar year.
(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year.
(xiii) Which members may catch the Amendment 80 cooperative's CQ?	Use of a cooperative's CQ permit is determined by the Amendment 80 cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the Amendment 80 cooperative.

(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ. A copy of this agreement or contract must be submitted to NMFS with the application for CQ.
(xv) What happens of the Amendment 80 cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended Amendment 80 membership agreement or contract must be sent to NMFS in accordance with § 679.4(a)(4).
(xvi) What happens if the Amendment 80 cooperative exceeds its CQ amount?	An Amendment 80 cooperative is not authorized to catch Amendment 80 species or use crab PSC or halibut PSC in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a Amendment 80 cooperative. Each member of an Amendment 80 cooperative is responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Amendment 80 Program.
(xvii) Is there a limit on how much CQ a Amendment 80 cooperative may hold or use?	No, but each Amendment 80 QS holder is subject to use caps, and an Amendment 80 vessel may be subject to vessel use caps. See § 679.92(a).
(xviii) Is there a limit on how much CQ a vessel may catch?	Yes, an Amendment 80 vessel may not catch more than 20 percent of the aggregate Amendment 80 species ITAC assigned to the Amendment 80 sector for that calendar year. See § 679.92(a) for use cap provisions.
(xix) Are there any special reporting requirements?	Yes, the designated representative of the Amendment 80 cooperative must submit an annual Amendment 80 cooperative report as described under § 679.5(s). In addition, each member of an Amendment 80 cooperative must submit a timely and complete EDR as described under § 679.94.

(4) *Successors-in-interest.* If a member of an Amendment 80 cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the Amendment 80 QS permits assigned to the Amendment 80 cooperative for that year from that person remains under the control of the Amendment 80 cooperative for the duration of that calendar year as specified in the Amendment 80 cooperative contract. Each Amendment 80 cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of an Amendment 80 cooperative member.

§ 679.92 Amendment 80 Program use caps and sideboard limits.

(a) *Use caps*—(1) *General.* Use caps limit the amount of Amendment 80 QS units and Amendment 80 species CQ that may be held or used by an Amendment 80 QS holder or Amendment 80 vessel. Use caps may not be exceeded unless the Amendment 80 QS holder or Amendment 80 vessel subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are two types of use caps: Person use caps and vessel use caps. All Amendment 80 QS unit use caps are based on the aggregate Amendment 80 species Amendment 80 initial QS pool set forth in Table 32 to this part. The use caps apply as follows:

(2) *Amendment 80 QS holder use cap*—(i) *QS and CQ use cap.* A person may not individually or collectively hold or use more than thirty (30.0) percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector and resulting CQ unless that person receives those Amendment 80 QS units on an Amendment 80 permit(s) based on Amendment 80 legal landings assigned to Amendment 80 vessel(s) or Amendment 80 LLP license(s) held by that Amendment 80 QS holder:

(A) Prior to June 9, 2006; and

(B) At the time of application for Amendment 80 QS.

(ii) *CQ use cap calculation.* For purposes of calculating and applying the CQ use cap, a person is assigned CQ based on:

(A) The amount of CQ derived from the Amendment 80 QS units held by that person; and

(B) Any CQ assigned to that person in an Application for CQ transfer.

(iii) *Transfer limitations.* (A) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units that exceeds the use cap listed in paragraph (a)(2)(i) of this section cannot receive any Amendment 80 QS permit by transfer unless and until that person's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(B) If an Amendment 80 QS holder that received an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section transfers an Amendment 80 QS permit to another person, the transferor may not hold more than the greater of either the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of aggregate Amendment 80 QS units continues to exceed the use cap, or the amount equal to the Amendment 80 QS unit use cap established in paragraph (a)(2)(i) of this section.

(C) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section is prohibited from having any CQ assigned to that Amendment 80 QS holder in an application for CQ transfer unless and until that Amendment 80 QS holder's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(3) *ITAC use cap for an Amendment 80 vessel.* An Amendment 80 vessel may not be used to catch an amount of Amendment 80 species greater than twenty (20.0) percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector. This amount includes ITAC that is assigned as CQ or to the Amendment 80 limited access fishery.

(b) *GOA sideboard limits*—(1) *GOA groundfish sideboard limits.* Amendment 80 vessels may not be used to catch more than the amounts of groundfish in the management areas specified in Table 37 to this part from January 1 through December 31 of each year.

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the F/V GOLDEN FLEECE using LLG 2524 as specified in paragraph (d) of this section, may not use halibut PSC in the fishery complexes, management areas, and seasons greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year; except that an Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part.

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* Only an Amendment 80 vessel listed in column A of Table 39 to this part and named on an Amendment 80 LLP license listed in column C of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) *Sideboard restrictions applicable to the fishing vessel GOLDEN FLEECE.* (1) The fishing vessel GOLDEN FLEECE (USCG documentation number 609951):

(i) May not be used for directed groundfish fishing for northern rockfish, pelagic shelf rockfish, pollock, Pacific cod, or Pacific ocean perch in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(ii) Is not subject to halibut PSC sideboard limits as described in paragraph (b)(2) of this section in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except as provided in paragraphs (d)(2) and (3) of this section.

(2) If any Amendment 80 vessel other than the GOLDEN FLEECE is named on the LLP license number LLG 2524, that vessel is subject to all sideboard restrictions in paragraphs (b) and (c) of this section.

(3) If the GOLDEN FLEECE is named on any LLP license other than LLP license number LLG 2524, the GOLDEN FLEECE is subject to all sideboard restrictions in paragraphs (b) and (c) of this section.

§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting.* See § 679.5(s).

(b) *Permits.* See § 679.4(o).

(c) *Catch monitoring requirements for Amendment 80 vessels and catcher/processors not listed in § 679.4(l)(2)(i) using trawl gear and fishing in the BSAI.* The requirements under paragraphs (c)(1) through (9) of this section apply to Amendment 80 vessels and any other catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and fishing or receiving fish in the BSAI and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. At all times when a catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear has BSAI groundfish onboard the vessel, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* There is sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(d) *Catch monitoring requirements for Amendment 80 vessels fishing in the GOA.* The requirements under this section apply to any Amendment 80 vessel fishing in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. At all times when an Amendment 80 vessel has GOA groundfish onboard the vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, and all catch is made available for sampling by a NMFS-certified observer;

(2) The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6)(ii); and

(3) The requirements in paragraphs (c)(4), (5), (8), and (9) of this section are met.

(e) *Catch accounting*—(1) *Amendment 80 species*—(i) *Amendment 80 cooperative.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is assigned to an Amendment 80 cooperative will be debited from the CQ permit for that Amendment 80 cooperative for that calendar year.

(ii) *Amendment 80 limited access fishery.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by a vessel that is assigned to the Amendment 80 limited access fishery will be debited against the ITAC for that Amendment 80 species in the Amendment 80 limited access fishery for that calendar year.

(2) *Crab PSC and halibut PSC*—(i) *Amendment 80 cooperative.* All crab PSC or halibut PSC used by an Amendment 80 vessel, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing

season, that is assigned to an Amendment 80 cooperative will be debited against the CQ permit for that Amendment 80 cooperative for that calendar year.

(ii) *Amendment 80 limited access fishery.* All crab PSC or halibut PSC used by an Amendment 80 vessel, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is assigned to an Amendment 80 limited access fishery will be debited against the crab PSC or halibut PSC limit assigned to the Amendment 80 limited access fishery for that calendar year.

(3) *GOA groundfish sideboard limits.* All Amendment 80 sideboard species caught in the GOA, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel will be debited against the Amendment 80 sideboard limit for that Amendment 80 sideboard species for that calendar year.

(4) *GOA halibut sideboard limits.* All halibut PSC used by all Amendment 80 vessels in the GOA, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the sideboard limit established for the Amendment 80 sector, except:

(i) Halibut PSC CQ used by the catcher/processor sector in the Rockfish Program in the Central GOA; and

(ii) Halibut PSC used by the GOLDEN FLEECE (USCG Documentation number 609951) if the GOLDEN FLEECE is named on LLP licence number LLG 2524.

§ 679.94 Economic data report (EDR) for the Amendment 80 sector.

(a) *Amendment 80 EDR*—(1) *Requirement to submit an EDR.* Each year except 2008, a person who held an Amendment 80 QS permit during a calendar year must submit to NMFS an EDR for that calendar year for each Amendment 80 QS permit held by that person. An EDR must be timely and complete.

(2) *Submission of EDR.* An EDR may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* NMFS, Alaska Fisheries Science Center, Economic Data Reports, 7600 Sand Point Way NE, F/AKC2, Seattle, WA 98115; or

(ii) *Fax:* 206–526–6723.

(3) *EDR forms.* EDR forms are available through the Internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 206–526–6414.

(4) *Deadline.* For each calendar year except 2008, a completed EDR must be received by NMFS no later than 1700 hours A.l.t. on June 1 of the year following the calendar year during which the Amendment 80 QS permit was held, or if sent by U.S. mail, postmarked by that date.

(5) *Contents of EDR.* An EDR must contain completed submissions for each data field required under paragraphs (b) and (c) of this section, as applicable, and the following information:

(i) *Calendar year of EDR.* Calendar year for which the EDR is being submitted;

(ii) *Amendment 80 QS holder information.* Name of company, partnership, other business entity, business telephone number, business fax number, e-mail address (if available) and Amendment 80 QS permits held;

(iii) *Designated representative.* An Amendment 80 QS holder must appoint an individual to be his designated representative and must ensure that the designated representative complies with the regulations in this section. The designated representative is the primary contact person for NMFS on issues relating to data required in the EDR. If an individual Amendment 80 QS holder chooses to complete the EDR, then they are the designated representative;

(iv) *Person completing this report.* (A) Indicate whether the person completing this report is the Amendment 80 QS holder, or the designated representative for the Amendment 80 QS holder;

(B) Record the name of the person completing the report, title, business telephone number, fax number, signature of the person submitting the EDR, and e-mail address (if available). If a designated representative is not the Amendment 80 QS holder, written authorization to act on behalf of the Amendment 80 QS holder must accompany the EDR;

(v) *Amendment 80 QS holders who own Amendment 80 vessels.* An Amendment 80 QS holder who is an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held and each Amendment 80 vessel owned by that Amendment 80 QS holder as described under paragraphs (b) and (c) of this section;

(vi) *Amendment 80 QS holders who do not own Amendment 80 vessels.* An Amendment 80 QS holder who is not an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held by that Amendment 80 QS holder as described under paragraph (c) of this section; and

(vii) *Certification.* The Amendment 80 QS holder and his designated representative, if applicable, must certify that all information provided under paragraphs (b) and (c) of this section is accurate and complete.

(b) *Amendment 80 vessel information*—(1) *Ownership of an Amendment 80 vessel.* If a person owned any part of an Amendment 80 vessel during a calendar year, that person must provide the following information for each Amendment 80 vessel owned:

(i) *Amendment 80 vessel owner information.* Vessel name, USCG Documentation number, ADF&G vessel registration number, ADF&G processor code, Amendment 80 LLP license number(s) which designated that vessel during that calendar year, Amendment 80 QS permit assigned to that vessel during that calendar year, Amendment 80 limited access fishery permit number assigned to that vessel during that calendar year, or name of Amendment 80 cooperative to which that Amendment 80 vessel was assigned during that calendar year (if applicable);

(ii) *Amendment 80 vessel operator information.* If a person other than the Amendment 80 QS holder operated an Amendment 80 vessel owned by that Amendment 80 QS holder during a calendar year, provide the following: Name of company, partnership, other business entity, and business telephone number, business fax number, and e-mail address (if available);

(2) *Vessel characteristics.* (i) Home port, U.S. gross registered tonnage, net tonnage, length overall, beam, shaft horsepower, fuel capacity, year built;

(ii) Vessel survey value: Most recent survey value, date of last survey value, did survey reflect value of permits and processing equipment;

(iii) Freezing capacity: Maximum freezing capacity of this vessel in pounds per hour and freezer space (measured in pounds of product);

(iv) Fuel consumption: Total consumption for the calendar year and average fuel consumed per hour from fishing and processing, transiting, and in shipyard.

(v) Vessel activity during calendar year: Number of days the vessel was engaged in fishing, processing, steaming empty, offloading, and inactive or in shipyard. Report separately for Amendment 80 fisheries and all other fisheries; and

(vi) Processing capacity: Record each type of product processed on the line in the Amendment 80 fishery, the number of processing lines of similar type

(equipment and/or product mix), and the vessel's maximum average throughput in pounds (round weight) per hour under normal operating conditions (assuming quantity of raw fish and other inputs is not limiting), totaled over all processing lines of this type.

(3) *Calendar year revenues.*

(i) Total fishery product sales volume and FOB Alaska revenue; and

(ii) All other income derived from vessel operations: tendering, charters, cargo transport, etc.

(4) *Calendar year costs.* (i) Fishing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(ii) Processing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(iii) Labor expenses for all other employees aboard the vessel;

(iv) Food and provisions not paid by crew;

(v) Recruitment, travel, benefits, and other employee related costs;

(vi) Lease expense for this vessel and onboard equipment;

(vii) Purchases of fishing gear (nets, net electronics, doors, cables, etc.);

(viii) Expenditures on processing equipment;

(ix) Product storage equipment;

(x) Expenditures on vessel and onboard equipment (other than fishing, processing, or storage equipment);

(xi) Fishing gear leases;

(xii) Repair and maintenance expenses for vessel and processing equipment;

(xiii) Freight storage and other sales costs;

(xiv) Product packaging materials;

(xv) Fuel and lubrication;

(xvi) Observer fees and monitoring costs;

(xvii) General administrative costs;

(xviii) Insurance;

(xix) Fisheries landing taxes;

(xx) Total raw fish purchases; and

(xxi) All other costs related to vessel operations not included in the preceding list.

(5) *Calendar year labor.* Average number and total number of employees for fishing, processing, and other activities on this vessel.

(i) Average number of hours worked per day by processing line employee; and

(ii) Crew revenue share system used for some processing, all processing, some non-processing, and all non-processing crew.

(c) *Permit revenues or expenditures.* An Amendment 80 QS holder or his designated representative will record revenues and expenditures for any tradable fishing or processing privilege. Attribute those revenues or costs to a specific Amendment 80 vessel or Amendment 80 LLP as applicable.

(1) *Permit revenues.* (i) Income from sale or lease of fishery licenses, permits, harvesting or processing rights: Record license or permit number and revenue for each asset sold; and

(ii) Royalties received from leasing allocations including metric tons and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased crab PSC, and any other species leased.

(2) *Permit expenditures.* (i) Fishery licenses, permits, harvesting or processing rights: record license or permit number and cost for each asset purchased;

(ii) Royalties paid for leases of catcher/processing quota, including metric tons, and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased king crab PSC, and any other species leased;

(iii) Cooperative costs including lawyer and accountant costs, association fees, and other fees charged by harvest cooperative; and

(iv) Any other costs incurred from the use of fishery licenses, permits, harvesting or processing rights not included in the preceding list.

(d) *EDR audit procedures.* (1) NMFS will conduct verification of information with the Amendment 80 QS holder or designated representative, if applicable.

(2) The Amendment 80 QS holder or designated representative, if applicable, must respond to inquiries by NMFS within 20 days of the date of issuance of the inquiry.

(3) The Amendment 80 QS holder or designated representative, if applicable, must provide copies of additional data to facilitate verification by NMFS. The NMFS auditor may review and request copies of additional data provided by the Amendment 80 QS holder or designated representative, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

15. Tables 31 through 41 are added to part 679 to read as follows:

* * * * *

TABLE 31 TO PART 679.—LIST OF AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES

Column A: Name of Amendment 80 vessel	Column B: USCG Documentation No.	Column C: Amendment 80 LLP license No. originally assigned to the Amendment 80 vessel
ALASKA JURIS	569276	LLG 2082
ALASKA RANGER	550138	LLG 2118
ALASKA SPIRIT	554913	LLG 3043
ALASKA VOYAGER	536484	LLG 2084
ALASKA VICTORY	569752	LLG 2080
ALASKA WARRIOR	590350	LLG 2083
ALLIANCE	622750	LLG 2905
AMERICAN NO I	610654	LLG 2028
ARCTIC ROSE	931446	LLG 3895
ARICA	550139	LLG 2429
BERING ENTERPRISE	610869	LLG 3744
CAPE HORN	653806	LLG 2432
CONSTELLATION	640364	LLG 1147
DEFENDER	665983	LLG 3217
ENTERPRISE	657383	LLG 4831
GOLDEN FLEECE	609951	LLG 2524
HARVESTER ENTERPRISE	584902	LLG 3741

TABLE 31 TO PART 679.—LIST OF AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES—Continued

Column A: Name of Amendment 80 vessel	Column B: USCG Documentation No.	Column C: Amendment 80 LLP license No. originally assigned to the Amendment 80 vessel
LEGACY	664882	LLG 3714
OCEAN ALASKA	623210	LLG 4360
OCEAN PEACE	677399	LLG 2138
PROSPERITY	615485	LLG 1802
REBECCA IRENE	697637	LLG 3958
SEAFISHER	575587	LLG 2014
SEAFREEZE ALASKA	517242	LLG 4692
TREMONT	529154	LLG 2785
U.S. INTREPID	604439	LLG 3662
UNIMAK	637693	LLG 3957
VAERDAL	611225	LLG 1402

TABLE 32 TO PART 679.—AMENDMENT 80 INITIAL QS POOL

Amendment 80 species	Management area	Amendment 80 Initial QS pool in units
Atka mackerel	BS/541 542 543	Σ Highest Five Years in metric tons in the Amendment 80 official record as of December 31, 2007, for that Amendment 80 species in that management area.
AI Pacific ocean perch	541 542 543	
Flathead sole	BSAI	
Pacific cod	BSAI	
Rock sole	BSAI	
Yellowfin sole	BSAI	

TABLE 33 TO PART 679.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

[Except yellowfin sole]

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka mackerel	543	All years	100	0
	542	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
	541/EBS	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
Aleutian Islands Pacific ocean perch	543	All years	98	2
	542	2008	95	5
		2009 and all future years	90	10
	541	2008	95	5
		2009 and all future years	90	10
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0

TABLE 33 TO PART 679.—ANNUAL APPORTIONMENT OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS—Continued

[Except yellowfin sole]

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Flathead sole	BSAI	All years	100	0

TABLE 34 TO PART 679.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between . . .	and . . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is . . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is . . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is . . .
	Column A	Column B	Column C	Column D	Column E
Row 1	0 mt	87,499 mt	0.930	ITAC × Row 1, Column C	ITAC − Row 1, Column E.
Row 2	87,500 mt	94,999 mt	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column c) + (Row 1, Column D).	ITAC − Row 2, Column D.
Row 3	95,000 mt	102,499 mt	0.820	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + (∑ Column D, Rows 1 and 2).	ITAC − Row 3, Column D.
Row 4	102,500 mt	109,999 mt	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + (∑ Column D, Rows 2 through 3).	ITAC − Row 4, Column D.
Row 5	110,000 mt	117,499 mt	0.710	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + (∑ Column D, Rows 2 through 4).	ITAC − Row 5, Column D.
Row 6	117,500 mt	124,999 mt	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + (∑ Column D, Rows 2 through 5).	ITAC − Row 6, Column D.
Row 7	125,000 mt and greater		0.600	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + (∑ Column D, Rows 2 through 6).	ITAC − Row 7, Column D.

TABLE 35 TO PART 679.—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* crab PSC limit (COBLZ) . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit after allocation as PSQ			
Amendment 80 sector	2008	2,525 mt	62.48	61.44	52.64	29.59
	2009	2,475 mt	59.36	58.37	50.01	28.11
	2010	2,425 mt	56.23	55.30	47.38	26.63
	2011	2,375 mt	53.11	52.22	44.74	25.15
	2012 and all future years	2,325 mt	49.98	49.15	42.11	23.67
BSAI trawl limited access	All years	875 mt	30.58	32.14	46.99	46.81

TABLE 36 TO PART 679.—PERCENTAGE OF CRAB AND HALIBUT PSC LIMIT ASSIGNED TO EACH AMENDMENT 80 SPECIES

For the following PSC species . . .	The percentage of the Amendment 80 sector PSC limit assigned to each Amendment 80 species is . . .					
	Atka mackerel	AI Pacific ocean perch	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Halibut	3.96	1.87	24.79	13.47	24.19	31.72
Zone 1 Red king crab	0.14	0.56	6.88	0.48	61.79	30.16
C. opilio crab (COBLZ)	0	0.06	6.28	17.91	9.84	65.91
Zone 1 *C. bairdi* crab	0	0	17.01	3.13	56.15	23.71
Zone 2 *C. bairdi* crab	0.01	0.03	7.92	37.31	7.03	47.70

TABLE 37 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR GROUNDFISH FOR THE AMENDMENT 80 SECTOR

In the following management areas in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season . . .	The sideboard limit for . . .	Is . . .
Area 610	Pollock	0.3 % of the TAC.
Area 620	Pollock	0.2 % of the TAC.
Area 630	Pollock	0.2 % of the TAC.
Area 640	Pollock	0.2 % of the TAC.
West Yakutat District	Pacific cod	3.4 % of the TAC.
	Pacific ocean perch	96.1 % of the TAC.
	Pelagic shelf rockfish	89.6 % of the TAC.
Central GOA	Pacific cod	4.4 % of the TAC.
	Pacific ocean perch	Subject to regulations in subpart G to this part.
	Pelagic shelf rockfish	Subject to regulations in subpart G to this part.
	Northern rockfish	Subject to regulations in subpart G to this part.
Western GOA	Pacific cod	2.0 % of the TAC.
	Pacific ocean perch	99.4 % of the TAC.
	Pelagic shelf rockfish	76.4 % of the TAC.
	Northern rockfish	100 % of the TAC.

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the state of Alaska for which it adopts a Federal fishing season.	0.48	1.89	1.46	0.74	2.27

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR—Continued

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the state of Alaska for which it adopts a Federal fishing season.	1.15	10.72	5.21	0.14	3.71

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS AND AMENDMENT 80 LLP LICENSES THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessel	*Column B:* USCG documentation No.	*Column C:* Amendment 80 LLP license No.
ALLIANCE	622750	LLG 2905
AMERICAN NO I	610654	LLG 2028
DEFENDER	665983	LLG 3217
GOLDEN FLEECE	609951	LLG 2524
LEGACY	664882	LLG 3714
OCEAN ALASKA	623210	LLG 4360
OCEAN PEACE	677399	LLG 2138
SEAFREEZE ALASKA	517242	LLG 4692
U.S. INTREPID	604439	LLG 3662
UNIMAK	637693	LLG 3957
VAERDAL	611225	LLG 1402

TABLE 40 TO PART 679.—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined in § 679.21(e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	887
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/other flatfish [1]	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish [2]	N/A	2
Pollock/Atka mackerel/other species	N/A	5

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, flathead sole, yellowfin sole, and arrowtooth flounder.

[2] Applicable from July 1 through December 31.

TABLE 41 TO PART 679.—BSAI CRAB PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

For the following crab species in the following areas . . .	The AFA catcher/processor crab PSC sideboard limit is equal to the following ratio . . .	The AFA catcher vessel crab PSC sideboard limit is equal to the following ratio . . .	Multiplied by . . .
Red king crab Zone 1	0.007	0.299	The PSC amount in number of animals available to trawl vessels in the BSAI after allocation of PSQ established in the annual harvest specifications for that calendar year.
C. opilio crab (COBLZ)	0.153	0.168	
Zone 1 *C. bairdi* crab	0.140	0.330	
Zone 2 *C. bairdi* crab	0.050	0.186	

[FR Doc. E7–9828 Filed 5–29–07; 8:45 am]

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Federal Register

Wednesday,
May 30, 2007

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances-n-Propyl Bromide in Solvent Cleaning; Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-DepletingSubstances-n-Propyl Bromide in Adhesives, Coatings, and Aerosols; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2002–0064; FRL–8316–8]

RIN 2060–AO10

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances-n-Propyl Bromide in Solvent Cleaning

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) determines that n-propyl bromide (nPB) is an acceptable substitute for methyl chloroform and chlorofluorocarbon (CFC)–113 in the solvent cleaning sector under the Significant New Alternatives Policy (SNAP) program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a substantially greater risk to public health and the environment than the substance they replace or than other available substitutes.

DATES: This final rule is effective on July 30, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0064. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This docket facility 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.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9163; fax number (202) 343–2362, *e-mail address: sheppard.margaret@epa.gov.* Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION: Table of Contents: This action is divided into eight sections:

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I. General Information

A. Does this action apply to me?

This final rule lists n-propyl bromide (nPB) as an acceptable substitute when used as a solvent in industrial equipment for metals cleaning, electronics cleaning, or precision cleaning. General metals, precision, and electronics cleaning includes cleaning with industrial cleaning equipment such as vapor degreasers, in-line cleaning systems, or automated equipment used for cleaning below the boiling point. We understand that nPB is used primarily for cleaning in vapor degreasers. Manual cleaning, such as pail-and-brush, hand wipe, recirculating over-spray (''sink-on-a-drum'') parts washers, immersion cleaning into dip tanks with manual parts handling, and use of squirt bottles, is not currently regulated under the SNAP program. EPA also does not regulate the use of solvents as carriers for flame retardants, dry cleaning, or paint stripping under the SNAP program.

This final action does not address the use of n-propyl bromide as an aerosol solvent or as a carrier solvent in adhesives or coatings. We are issuing a proposed rule addressing these end uses in a separate **Federal Register** action. Neither this final nor the proposed rule issue a decision on other end uses in which nPB was submitted as an ozone-depleting substance (ODS) substitute, such as fire suppression or foam blowing, because of insufficient information.

Affected users under this final rule could include:

- Businesses that clean metal parts, such as automotive manufacturers, machine shops, machinery manufacturers, and electroplaters.
- Businesses that manufacture electronics or computer equipment.
- Businesses that require a high level of cleanliness in removing oil, grease, or wax, such as for aerospace applications or for manufacture of optical equipment.

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	331	Primary Metal Manufacturing.
Industry	332	Fabricated Metal Product Manufacturing.
Industry	333	Machinery Manufacturing.
Industry	334	Computer and Electronic Product Manufacturing.
Industry	335	Equipment Appliance, and Component Manufacturing.
Industry	336	Transportation Equipment Manufacturing.
Industry	337	Furniture and Related Product Manufacturing.
Industry	339	Miscellaneous Manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT.**

B. What is n-propyl bromide?

n-propyl bromide (nPB), also called 1-bromopropane, is a non-flammable organic solvent with a strong odor. Its chemical formula is C_3H_7Br. Its identification number in Chemical Abstracts Service's registry (CAS Reg. No.) is 106–94–5. nPB is used to remove wax, oil, and grease from electronics, metal, and other materials. It also is used as a carrier solvent in adhesives. Some brand names of products using nPB are: Abzol®, EnSolv®, and Solvon® cleaners; Pow-R-Wash® NR Contact Cleaner, Superkleen Flux Remover 2311 and LPS NoFlash NU Electro Contact Cleaner aerosols; and Whisper Spray and Fire Retardant Soft Seam 6460 adhesives.

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in this document.

8-hr—eight hour
ACGIH—American Conference of Governmental Industrial Hygienists
AEL—acceptable exposure limit
ASTM—American Society for Testing and Materials
BMD—benchmark dose
BMDL—benchmark dose lowerbound, the lower 95%-confidence level bound on the dose/exposure associated with the benchmark response
BSOC—Brominated Solvents Consortium
CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CEG—community exposure guideline
CERHR—Center for the Evaluation of Risks to Human Reproduction
CFC-113—the ozone-depleting chemical 1,1,2-trifluoro-1,2,2-trichloroethane, $C_2Cl_3F_3$, CAS Reg. No. 76–13–1
CFC—chlorofluorocarbon
cfm—cubic feet per minute
CFR—Code of Federal Regulations
CNS—central nervous system
DNA—deoxyribonucleic acid
EDSTAC—The Endocrine Disruptor Screening and Testing Advisory Committee
EPA—the United States Environmental Protection Agency
FR—**Federal Register**
GWP—global warming potential
HCFC-123—the ozone-depleting chemical 1,2-dichloro-1,1,2-trifluoroethane, CAS Reg. No. 306–83–2
HCFC-141b—the ozone-depleting chemical 1,1-dichloro-1-fluoroethane, CAS Reg. No. 1717–00–6
HCFC-225ca/cb—the commercial mixture of the two ozone-depleting chemicals 3,3-dichloro-1,1,1,2,2-pentafluoropropane, CAS Reg. No. 422–56–0 and 1,3-dichloro-1,1,2,2,3-pentafluoropropane, CAS Reg. No. 507–55–1
HCFC—hydrochlorofluorocarbon
HEC—human equivalent concentration
HFC-245fa—the chemical 1,1,3,3,3-pentafluoropropane, CAS Reg. No. 460–73–1
HFC-365mfc—the chemical 1,1,1,3,3-pentafluorobutane, CAS Reg. No. 405–58–6
HFC-4310mee—the chemical 1,1,1,2,3,4,4,5,5,5-decafluoropentane, CAS Reg. No. 138495–42–8
HFC—hydrofluorocarbon
HFE—hydrofluoroether
HHE—health hazard evaluation
ICF—ICF Consulting
ICR—Information Collection Request
iPB—isopropyl bromide, C_3H_7Br, CAS Reg. No. 75–26–3, an isomer of n-propyl bromide; also called 2-bromopropane or 2-BP
K_{oc}—organic carbon partition coefficient, for determining the tendency of a chemical to bind to organic carbon in soil
LC_{50}—the concentration at which 50% of test animals die
LOAEL—Lowest Observed Adverse Effect Level
Log K_{ow}—logarithm of the octanol-water partition coefficient, for determining the tendency of a chemical to accumulate in lipids or fats instead of remaining dissolved in water
mg/l—milligrams per liter
MSDS—Material Safety Data Sheet
NAICS—North American Industrial Classification System
NESHAP—National Emission Standard for Hazardous Air Pollutants
NIOSH—National Institute for Occupational Safety and Health
NOAEL—No Observed Adverse Effect Level
NOEL—No Observed Effect Level
nPB-n-propyl bromide, C_3H_7Br, CAS Reg. No. 106–94–5; also called 1-bromopropane or 1-BP
NPRM—Notice of Proposed Rulemaking
NTP—National Toxicology Program
NTTAA—National Technology Transfer and Advancement Act
ODP—ozone depletion potential
ODS—ozone-depleting substance
OEHHA—Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency
OMB—U.S. Office of Management and Budget
OSHA—the United States Occupational Safety and Health Administration
PCBTF—parachlorobenzotrifluoride, CAS Reg. No. 98–56–6
PEL—Permissible Exposure Limit
ppm—parts per million
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
RfC—reference concentration
SIP—state implementation plan
SNAP—Significant New Alternatives Policy
STEL—Short term exposure limit
TCA—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called methyl chloroform, MCF, or 1,1,1
TCE—the chemical 1,1,2-trichloroethene, CAS Reg. No. 79–01–6, C_2Cl_3H; also call trichloroethylene
TERA—Toxicological Excellence for Risk Assessment
TLV—Threshold Limit Value™
TSCA—Toxic Substances Control Act
TWA—time-weighted average
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
VMSs—volatile methyl siloxanes
VOC—volatile organic compound
WEL—workplace exposure limit

II. How does the Significant New Alternatives Policy (SNAP) program work?

A. What are the statutory requirements and authority for the SNAP program?

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a

program for evaluating alternatives to ozone-depleting substances, referred to as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. We must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). EPA has 90 days to grant or deny a petition. Where the Agency grants the petition, we must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. How do the regulations for the SNAP program work?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances.

Anyone who plans to market or produce a substitute for an ODS in one of the eight major industrial use sectors must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to the person planning to introduce the substitute into interstate commerce, typically chemical manufacturers, but may also include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

C. How does the SNAP program list our decisions?

The Agency has identified four possible decision categories for substitutes: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant sector end-use. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is illegal to replace an ODS with a substitute listed as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. We describe such substitutes as ''acceptable subject to use conditions.'' If you use these substitutes without meeting the associated use conditions, you use these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

For some substitutes, the Agency may permit a narrowed range of use within a sector. For example, we may limit the use of a substitute to certain end-uses or specific applications within an industry sector or may require a user to demonstrate that no other acceptable end uses are available for their specific application. We describe these substitutes as ''acceptable subject to narrowed use limits.'' If you use a substitute that is acceptable subject to narrowed use limits, but use it in applications and end-uses which are not consistent with the narrowed use limit, you are using these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

The Agency publishes its SNAP program decisions in the **Federal Register**. For those substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, we first publish these decisions as proposals to allow the public opportunity to comment, and we publish final decisions as final rulemakings. In contrast, we publish substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the rule implementing the SNAP program (59 FR 13044), we do not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information.'' These statements provide additional information on substitutes that we determine are either unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements listed in this column are binding under other programs. The further information does not necessarily include all other legal obligations pertaining to the use of the substitute. However, we encourage users of substitutes to apply all statements in the **FURTHER INFORMATION** column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require the affected industry to make significant changes in existing operating practices.

D. Where can I get additional information about the SNAP program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, look at EPA's

Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/lists/index.html*. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044), codified at Code of Federal Regulations at 40 CFR part 82, subpart G. You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at *http://www.epa.gov/ozone/snap/chron.html*.

III. What is EPA's final listing decision on nPB in solvent cleaning?

The Agency is listing nPB as an acceptable substitute in metals, precision and electronics cleaning end uses. Based on the available information, we find that nPB can be used with no substantial increase in overall risks to human health and the environment, compared to other available or potentially available substitutes for ozone-depleting substances in these end uses.

EPA is issuing today's listing in the form of a final rule, rather than in a notice of acceptability, in order to respond to the public comments received on a Notice of Proposed Rulemaking (NPRM) that we issued on June 3, 2003 (68 FR 33284). In that rule, we proposed listing n-propyl bromide (nPB) as an acceptable substitute for use in metals, precision, and electronics cleaning, and in aerosols and adhesives end-uses, subject to the use condition that nPB used in these applications contains no more than 0.05% by weight of isopropyl bromide. In addition, in that proposed rule, EPA indicated that we also would recommend that users adhere to a voluntary acceptable exposure limit (AEL) of 25 parts per million averaged over an eight-hour time-weighted average (TWA). Based on new information received after the close of the comment period on the June 2003 NPRM relevant to our proposed determinations for adhesive and aerosol solvent end uses in that same proposal, the Agency is issuing a new proposal for those end uses in a separate **Federal Register** action. The Agency is not including a recommended AEL in this final rule.

Table 2 contains the text pertaining to nPB use in solvent cleaning end-uses that will be added to EPA's list of acceptable substitutes located on the SNAP Web site at *http://www.epa.gov/ozone/snap/lists/index.html*. This and other listings for substitutes that are acceptable without restriction are not included in the Code of Federal Regulations because they are not regulatory requirements. The information contained in the ''Further Information'' column of those tables are non-binding recommendations on the safe use of substitutes.

TABLE 2.—SOLVENT CLEANING ACCEPTABLE SUBSTITUTE

End use	Substitute	Decision	Further information
Metals cleaning, electronics cleaning, and precision cleaning.	n-propyl bromide (nPB) as a substitute for CFC–113 and methyl chloroform.	Acceptable	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. EPA expects that all users of nPB would comply with any final Permissible Exposure Limit that the Occupational Safety and Health Administration issues in the future under 42 U.S.C. 7610(a). nPB, also known as 1-bromopropane, is Number 106–94–5 in the Chemical Abstracts Service (CAS) Registry.

IV. What criteria did EPA consider in making this final determination?

In the original rule implementing the SNAP program (March 18, 1994; 59 FR 13044, at 40 CFR 82.180(a)(7)), the Agency identified the criteria we use in determining whether a substitute is acceptable or unacceptable as a replacement for class I or II compounds:

(i) Atmospheric effects and related health and environmental impacts; [e.g., ozone depletion potential]

(ii) General population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone;

(iii) Ecosystem risks [e.g., bioaccumulation, impacts on surface and groundwater];

(iv) Occupational risks;

(v) Consumer risks;

(vi) Flammability; and

(vii) Cost and availability of the substitute.

In this review, EPA considered all the criteria above. However, n-propyl bromide is used in industrial applications such as electronics cleaning. In those consumer products made using nPB, such as a computer, the nPB would have evaporated long before a consumer would purchase the item. Therefore, we believe there is no consumer exposure risk in the end uses we evaluated for this rule.

Section 612(c) of the Clean Air Act directs EPA to publish a list of replacement substances (''substitutes'') for class I and class II ozone depleting substances based on whether the Administrator determines they are safe (when compared with other currently or potentially available substitutes) for specific uses or are to be prohibited for specific uses. EPA must compare the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. In addition, EPA also considers whether the substitute for class I and class II ODSs ''reduces the overall risk to human health and the environment'' compared to the ODSs being replaced. Our evaluation is based on the end use; for example, we compared nPB as a metal cleaning solvent against other available or potentially available metal cleaning alternatives.

Although EPA does not judge the effectiveness of an alternative for purposes of determining whether it is acceptable, we consider effectiveness when determining whether alternatives that pose less risk are available in a particular application within an end use. There are a wide variety of acceptable alternatives listed for solvent cleaning, but not all are appropriate for a specific application because of differences in soils, materials compatibility, degree of cleanliness required, local environmental requirements, and other factors. For example, aqueous cleaners are effective cleaners in many situations and are the substitute of choice for many in the metal cleaning end use. However, in some specific precision cleaning applications that require a high degree of cleanliness and that have narrow

spaces that may trap water used in rinsing, aqueous cleaners may not be appropriate and thus are not available in those specific applications.

EPA evaluated each of the criteria separately and then considered overall risk to human health and the environment in comparison to other available or potentially available alternatives. We concluded that overall, while there are a number of alternatives that reduce the risks from ozone depletion or from smog production [1] slightly more than nPB when used in industrial solvent cleaning equipment, we found no single alternative that could work in all applications that clearly would reduce overall risks to human health and the environment in metals cleaning, electronics cleaning, and precision cleaning. Balancing the different criteria discussed below, nPB used in solvent cleaning end-uses does not pose a significantly greater risk than other substitutes or than the ODS it is replacing in these end uses. Thus, we are listing nPB as acceptable in metals cleaning, electronics cleaning, and precision cleaning.

A. Availability of Alternatives to Ozone-Depleting Substances

Other alternatives to methyl chloroform and CFC–113 are available for metals, electronics, and precision cleaning that have already been found acceptable or acceptable subject to use conditions under the SNAP program including: Aqueous cleaners, semi-aqueous cleaners, alcohols, ketones, esters, ethers, terpenes, HCFC–225ca/cb, hydrofluoroethers (HFEs), hydrofluorocarbon (HFC)–4310mee, HFC–365mfc, heptafluorocyclopentane, hydrocarbons, volatile methyl siloxanes (VMSs), trans-1,2-dichloroethylene, methylene chloride, trichloroethylene [2] (TCE), perchloroethylene,[3] parachlorobenzotrifluoride (PCBTF), and alternative technologies like supercritical fluids, plasma cleaning, and ultraviolet/ozone cleaning. Some alternatives are unlikely to be used in particular end uses because of constraints such as cleaning performance, materials compatibility, cost, workplace exposure requirements, or flammability. For example, no-clean technology is used in electronics cleaning and not in precision cleaning because of the need for a high degree of cleanliness in precision cleaning. Of the available substitutes, aqueous cleaners or solvents for vapor degreasing such as TCE, blends of alcohols or trans-1,2-dichloroethylene and HFCs or HFEs, and HCFC–225ca/cb are most likely to be used in the same applications as nPB. nPB is already commercially available in solvent cleaning, and is used mostly for vapor degreasing in the electronics and precision cleaning end uses (IBSA, 2002).

B. Impacts on the Atmosphere and Local Air Quality

As discussed in the June 2003 proposal, nPB emissions from the continental United States are estimated to have an ozone depletion potential (ODP) of approximately 0.013–0.018, (Wuebbles, 2002) [4], lower than that of the ozone depletion potential of the substances that nPB would replace—CFC–113 (ODP=1.0), and methyl chloroform and HCFC–141b (ODPs = 0.12) (WMO, 2002). Some other acceptable alternatives for these ODSs also have low ODPs. For example, HCFC–225ca/cb has an ODP of 0.02–0.03 (WMO, 2002) and is acceptable in metals cleaning and aerosol solvents, and acceptable subject to use conditions in precision cleaning and electronics cleaning. HCFC–123 has an ODP of 0.02 (WMO, 2002), and is an acceptable substitute in precision cleaning. There are other acceptable cleaners that essentially have no ODP—aqueous cleaners, HFEs, HFC–4310mee, HFC–365mfc, HFC–245fa, hydrocarbons, VMSs, methylene chloride, TCE, perchloroethylene, and PCBTF.

The global warming potential (GWP) index is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. Earlier data found a direct 100-year integrated GWP (100yr GWP) for nPB of 0.31 (Atmospheric and Environmental Research, Inc., 1995). More recent analysis that considers both the direct and the indirect GWP of nPB found a 100-yr GWP of 1.57 (ICF, 2003a; ICF, 2006a). In either case, the GWP for nPB is comparable to or below that of previously approved substitutes in these end uses.

Use of nPB may be controlled as a volatile organic compound (VOC) under state implementation plans (SIPs) developed to attain the National Ambient Air Quality Standards for ground-level ozone, which is a respiratory irritant. Users located in ozone non-attainment areas may need to consider using a substitute for cleaning that is not a VOC or if they choose to use a substitute that is a VOC, they may need to control emissions in accordance with the SIP. Companies have petitioned EPA, requesting that we exempt nPB from regulation as a VOC. However, unless and until EPA issues a final rulemaking exempting a compound from the definition of VOC and states change their SIPs to exclude such a compound from regulation, that compound is still regulated as a VOC. Other acceptable ODS-substitute solvents that are VOCs for state air quality planning purposes include most oxygenated solvents such as alcohols, ketones, esters, and ethers; hydrocarbons and terpenes; trichloroethylene; trans-1,2-dichloroethylene; monochlorotoluenes; and benzotrifluoride. Some VOC-exempt solvents that are acceptable ODS substitutes include HFC–245fa for aerosol solvents; HCFC–225ca/cb, HFC–365mfc and HFC–4310mee for metals electronics, and precision cleaning and aerosol solvents; and methylene chloride, perchloroethylene, HFE–7100, HFE–7200, PCBTF, acetone, and methyl acetate for metals, electronics, and precision cleaning, aerosol solvents, adhesives, and coatings.

C. Ecosystem and Other Environmental Impacts

EPA considered the possible impacts of nPB if it were to pollute soil or water as a waste and compared these impacts to screening criteria developed by the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC, 1998) (see Table 3). Available data on the organic carbon partition coefficient (K_{oc}), the breakdown processes in water and hydrolysis half-life, and the volatilization half-life indicate that nPB is less persistent in the environment than many solvents and would be of low to moderate concern for movement in soil. Based on the LC_{50}, the acute concentration at which 50% of tested animals die, nPB's toxicity to aquatic life is moderate, being less than that for some acceptable cleaners (for example, trichloroethylene, hexane, *d*-limonene, and possibly some aqueous cleaners) and greater than that for some others (methylene chloride, acetone, isopropyl alcohol, and some other aqueous cleaners). The LC_{50} for nPB is 67 mg/l, which is greater than 10 mg/l. Based on EPA's criteria for listing under the Toxics Release Inventory (U.S. EPA,

[1] Smog, also known as ground-level ozone, is produced from emissions of volatile organic compounds that react under certain conditions of temperature and light.

[2] Also called trichlorethene or TCE, C_2Cl_3H, CAS Reg. No. 79–01–6.

[3] Also called PERC, tetrachloroethylene, or tetrachloroethene, C_2Cl_4, CAS Reg. No. 172–18–4.

[4] nPB emissions in the tropics have an ODP of 0.071 to 0.100; the portions of the U.S. outside the continental U.S., such as Alaska, Hawaii, Guam, and the U.S. Virgin Islands, contain less than 1 percent of the U.S.'s businesses in industries that could use nPB. Thus, their potential impact on the ozone layer must be significantly less than that of the already low impact from nPB emissions in the continental U.S. (U.S. Economic Census, 2002a through f).

1992), we believe that nPB would not be sufficiently toxic to aquatic life to warrant listing under the Toxics Release Inventory. Based on its relatively low bioconcentration factor and log K_{ow} value, nPB is not prone to bioaccumulation. Table 3 summarizes information on environmental impacts of nPB; trans-1,2-dichloroethylene, a commonly-used solvent in blends for aerosol solvents, precision cleaning, and electronics cleaning; trichloroethylene, a solvent used for metals, electronics, and precision cleaning; and methyl chloroform, an ODS that nPB would replace.

TABLE 3.—ECOSYSTEM AND OTHER ENVIRONMENTAL PROPERTIES OF nPB AND OTHER SOLVENTS

Property	Description of environmental property	Value for nPB	Value for trans-1,2-dichloro-ethylene	Value for trichloro-ethylene	Value for methyl chloroform
K_{oc}, organic-carbon partition coefficient.	Degree to which a substance tends to stick to soil or move in soil. Lower values (< 300)* indicate great soil mobility; values of 300 to 500 indicate moderate mobility in soil.	330 (Source: ICF, 2004a).	32 to 49 (Source: ATSDR, 1996).	106 to 460 (Source: ATSDR, 1997).	152 (Source: U.S. EPA, 1994a).
Break down in water.	Mechanism and speed with which a compound breaks down in the environment. (Hydrolysis half-life values > 25 weeks* are of concern.)	Hydrolysis is significant. Hydrolysis half-life of 26 days (Source: ICF, 2004a).	Photolytic decomposition, dechlorination and biodegradation are significant; hydrolysis not significant (Source: ATSDR, 1996).	Volatilization and biodegradation most significant, with hydrolysis relatively insignificant. Hydrolysis half-life of 10.7 to 30 months (Source: ATSDR, 1997).	Volatilization most significant; biodegradation and hydrolysis also occur (Source: ATSDR, 2004).
Volatilization half-life from surface waters.	Tendency to volatilize and pass from water into the air.	3.4 hours-4.4 days (Source: ICF, 2004a).	3 to 6.2 hours (Source: ATSDR, 1996).	3.4 hours to 18 days (Source: ATSDR, 1997).	Hours to weeks (Source: U.S. EPA, 1994a).
LC_{50} (96 hours) for fathead minnows.	Concentration at which 50% of animals die from toxicity after exposure for 4 days.	67 mg/L (Source: Geiger, 1988).	108 mg/L (Source: U.S. EPA, 1980).	40.7 to 66.8 mg/L (Source: NPS, 1997).	52.8 to 105 mg/L (Source: U.S. EPA, 1994a).
log K_{ow}	Logarithm of the octanol/water partition coefficient, a measure of tendency to accumulate in fat. Log K_{ow} values >3* indicate high tendency to accumulate.	2.10 (Source: ICF, 2004a).	−0.48 (Source: LaGrega *et al.*, 2001, p. 1119).	2.38 (Source: LaGrega *et al.*, 2001, p. 1127).	2.50 (Source: LaGrega *et al.*, 2001, p. 1127).
Bioconcentration factor.	High factors (>1000)* indicate strong tendency for fish to absorb the chemical from water into body tissues.	23 (Source: HSDB, 2004).	5 to 23 (Source: ATSDR, 1996).	10 to 100 (Source: ATSDR, 1997).	<9 (Source: U.S. EPA, 1994a).

*Criteria from EDSTAC, 1998.

nPB is not currently regulated as a hazardous air pollutant and is not listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). nPB is not required to be reported as part of the Toxic Release Inventory under Title III of the Superfund Amendments and Reauthorization Act. Despite this, large amounts of nPB might be harmful if disposed of in water. We recommend that users dispose of nPB as they would dispose of any spent halogenated solvent (F001 waste under RCRA). Users should not dump nPB into water, and should dispose of it by incineration.

D. Flammability and Fire Safety

A number of commenters on the June 2003 proposal provided additional information on the flammability of nPB using standard test methods for determining flash point, such as the American Society for Testing and Materials (ASTM) D 92 open cup, ASTM D56 Tag closed cup, and ASTM D93 Pensky-Martens closed cup methods (BSOC, 2000; Miller, 2003; Morford, 2003a, b and c; Shubkin, 2003; Weiss Cohen, 2003). We agree with the commenters that by these standard test methods, nPB displayed no flash point. Thus under standard test conditions, nPB is not flammable, and it should not be flammable under normal use conditions. With its low potential for flammability, nPB is comparable to chlorinated solvents, HCFCs, HFEs, HFC–245fa, HFC–4310mee, and aqueous cleaners, and is less flammable than many acceptable substitutes, such as ketones, alcohols, terpenes, and hydrocarbons. nPB exhibits lower and upper flammability limits of approximately 3% to 8% (BSOC, 2000). A number of other solvents that are typically considered to be non-flammable also have flammability limits (for example, methylene chloride, HCFC–141b, and methyl chloroform). If the concentration of vapor of such a solvent falls between the upper and lower flammability limits, it could catch fire in presence of a flame. Such a situation is unusual, but users should take appropriate precautions in cases where the concentration of vapor could fall between the flammability limits.

E. Impact on Human Health

In evaluating potential human health impacts of nPB, EPA considered impacts on both exposed workers and on the general population because we identified these groups of people as the ones likely to be exposed to nPB when it is used as a substitute for ozone-depleting substances. EPA evaluated the available toxicity data using EPA guidelines to develop health-based criteria to characterize human health risks (U.S. EPA, 1994b. RfC Guidelines; U.S. EPA, 1991. Guidelines for Developmental Toxicity Risk Assessment; U.S. EPA, 1995b. Benchmark Dose guidelines; U.S. EPA, 1996. Guidelines for Reproductive Toxicity Risk Assessment).

In the June 2003 NPRM, EPA proposed that an exposure limit of 25 ppm would be protective of a range of effects observed in animal and human studies, including reproductive and developmental toxicity, neurotoxicity, and hepatotoxicity. Reduction of sperm motility in rats, noted across multiple studies at relatively low exposures, was determined to be the most sensitive effect. The Agency derived an exposure limit of 18 ppm from a dose response relationship in male rat offspring (''F1 generation'') whose parents were exposed to nPB from prior to mating through birth and weaning of the litters (WIL Research Laboratories, 2001). We then proposed to adjust this value upwards to 25 ppm based on principles of risk management consistent with one of the original ''Guiding Principles'' of the SNAP program (59 FR 13046, March 18, 1994). As we discussed in the June 2003 NPRM, EPA noted that adhesives users should be able to achieve an AEL of 25 ppm and that 25 ppm was between the level based on the most sensitive endpoint (sperm motility in the F1 offspring generation) and the second most sensitive endpoint (sperm motility in the F0 parental generation). Following SNAP program principles, we noted that ''a slight adjustment of the AEL may be warranted after applying judgment based on the available data and after considering alternative derivations'' (69 FR 33295). We stated further that ''18 ppm is a reasonable but possibly conservative starting point, and that exposure to 25 ppm would not pose substantially greater risks, while still falling below an upper bound on the occupation[al] exposure limit.''

As part of this final rulemaking, the Agency has reviewed both information available at the time of the 2003 NPRM related to the health risks associated with nPB use, as well as more recent case studies of nPB exposures and effects in the workplace, newly published toxicological studies, comments to the NPRM, new risk assessments on nPB, and a new threshold limit value (TLV) issued by the American Council of Government and Industrial Hygienists (ACGIH). The new information is reviewed in greater detail in EPA's proposal specific to the use of nPB in aerosol solvents, adhesives, and coatings.

Some general conclusions we draw from the new studies include:

- New data from toxicological studies on nervous system effects remain inconsistent and equivocal concerning the level at which nervous system effects occur (Fueta *et al.*, 2002; Fueta *et al.*, 2004; Honma *et al.*, 2003; Ishidao *et al.*, 2002, NTP, 2003; Sohn *et al.* 2002, Wang *et al.*, 2003).
- Case reports of nPB exposure in the workplace indicate that severe, possibly irreversible, neurological effects may occur at sustained concentrations of approximately 100 ppm or greater (Beck and Caravati, 2003; Majersik *et al.*, 2004; Majersik *et al.*, 2005; Ichihara *et al.*, 2002; Miller, 2005; Raymond and Ford, 2005). In other cases, similar or higher concentrations up to 170 ppm caused less severe nervous system effects (Nemhauser, 2005; NIOSH, 2003a; Ichihara, 2004a). Some neurological effects occurred in workers at levels of less than 50 ppm (Ichihara *et al.*, 2004b). Because of design and methodological limitations, such as small numbers of subjects and limited exposure information, these studies do not provide a sufficient quantitative basis to derive an acceptable exposure limit.
- Data on female rats indicate that nPB affects the maturation of ovarian follicles and the ovarian cycle (Yamada *et al.*, 2003), consistent with previously reviewed data (WIL, 2001; Sekiguchi *et al.*, 2002).
- Some data on occupation exposure suggest that workers exposed to nPB may have experienced menstrual disorders (Ichihara *et al.*, 2002; Ichihara *et al.*, 2004b). However, the data are not statistically significant and are not sufficient to conclude that nPB exposure caused these female reproductive effects.
- Data on DNA damage in workers exposed to nPB was not statistically significant (Toraason *et al.*, 2006).
- Metabolic data on mice and rats indicate some species differences. Metabolism of nPB appears to be primarily through cytochrome P450 enzymes, particularly in mice; glutathione conjugation also plays a role, and a bigger role for rats than for mice (RTI, 2005).

These more recent studies do not cause us to change our acceptability determination for solvent cleaning.

In addition, we considered new evaluations of the toxicity of nPB from Stelljes and Wood (2004), Toxicological Excellence in Risk Assessment (TERA, 2004), ICF (2004a, 2006a), and the TLV documentation from the ACGIH (ACGIH, 2005).

- Stelljes and Wood (2004) is similar in its results to SLR International (2001), a study by the same authors. EPA previously reviewed SLR International, 2001 in developing the June 2003 NPRM. Both these studies concluded with a recommended AEL of 156 ppm, based on male reproductive effects and uncertainty factors of 1 in driving the AEL. These documents assigned uncertainty factors in a manner inconsistent with EPA's guidance. This would result in a higher AEL than we would determine following the approach EPA has used on other chemicals, as well as an AEL that in our view would not sufficiently protect human health from nPB's effects because of multiple sources of uncertainty in available data (*i.e.*, variability within the working population and differences between animals and humans in how nPB affects the reproductive system).
- TERA (2004) reviews other AEL derivations for nPB, performs a benchmark dose (BMD) analysis, and recommends an AEL of 20 ppm based on live litter size. This document is consistent with EPA guidance for BMD modeling and for assigning uncertainty factors. A review of this document is available in the public docket (ICF, 2004b).
- ICF (2004c, 2006b) derived an AEL for nPB based upon female reproductive effects. ICF (2004c, 2006b) discussed the relevant literature (Ichihara *et al.*, 1999, 2002, 2004a, 2004b; Sekiguchi, 2002; Yamada *et al.*, 2003; WIL, 2001) and calculated mean estrous cycle length and the mean number of estrous cycles occurring during a three-week period at different exposure levels in the WIL, 2001 2-generation study. ICF (2004c, 2006a) found statistically significant reductions in the number of estrous cycles in a three-week period, both including and excluding females that had stopped their estrous cycles, at 250, 500, and 750 ppm in the F0 parental generation and at 500 and 750 ppm in the F1 generation. ICF (2004c, 2006a) conducted BMD modeling and calculated benchmark dose lowerbound (BMDL) values of the number of estrous cycles in a three-week period that varied from 102 to 208 ppm, depending upon the model used and the benchmark criteria selected. All data were calculated based on the mean reductions in estrous cycle number calculated from the WIL, 2001 study. Values were calculated for the F0 generation; the number of data for the F1 generation was too small for statistical analysis. The BMDLs that ICF calculated for the number of estrous cycles in a three-week period were 162 ppm and 208 ppm, depending on the benchmark response criteria (10% change in response vs. one standard deviation) and using a linear-heterogeneous model.
- The ACGIH issued a recommended TLV of 10 ppm (time-weighted average) for nPB (ACGIH, 2005). ACGIH summarized numerous studies showing

different effects of nPB and identified no observed effect levels (NOELs) of 200 ppm for hepatotoxicity (ClinTrials, 1997b) and less than 100 ppm for developmental toxicity, as evidenced by decreased fetal weight (Huntingdon Life Sciences, 2001).

The Occupational Safety and Health Administration (OSHA) has not developed a permissible exposure limit (PEL) for nPB that EPA could use to evaluate toxicity risks [5] from workplace exposure. In prior SNAP reviews, EPA has used ACGIH TLVs where available in assessing a chemical's risks and determining its acceptability if OSHA has not set a PEL. ACGIH is recognized as an independent, scientifically knowledgeable organization with expertise in issues of toxicity and industrial hygiene. However, in this case, EPA believes that ACGIH's TLV for nPB of 10 ppm has significant limitations as a reliable basis for an acceptable exposure limit, especially given the availability of other, more comprehensive analyses described in this preamble. First, according to the authors of the Huntingdon Life Sciences study, the decrease in fetal weight was an artifact of sampling procedure that biased the data (test animals were only sacrificed at the end of the day rather than at random). The Center for the Evaluation of Risks to Human Reproduction (CERHR) expert panel excluded ''aberrantly low'' fetal weights from one litter in this study and calculated a BMDL greater than 300 ppm for this endpoint after removing those outlier data (CERHR, 2002a, 2003a, and 2004a). TERA calculated a BMDL similar to that of the CERHR expert panel when analyzing the same data set (TERA, 2004). Further, the reference list in the documentation on the TLV indicates that ACGIH did not review and evaluate all the studies available prior to the development of the recommended exposure limit. For example, key supporting articles that reported disruption of estrous cycles (Yamada *et al.,* 2003 and Sekiguchi *et al.*, 2002) were not discussed in the TLV documentation. Further, ACGIH did not provide sufficient reasoning for the selection of the chosen endpoint over others (e.g., reproductive toxicity and/or neurotoxicity). The lack of discussion of applied uncertainty factors also prevents a determination of how ACGIH arrived at a TLV of 10 ppm. In summary, EPA is not basing its proposed acceptability determination for nPB on the ACGIH TLV because: (1) Other scientists evaluating the database for nPB did not find the reduced pup weight to be the most sensitive endpoint; (2) BMD analysis of the reduced pup weight data (CERHR, 2002a; TERA, 2004) results in a higher BMDL (roughly 300 ppm) than those for sperm effects and estrous cycle changes; and (3) ACGIH may not have reviewed the complete body of literature as several studies discussing neurotoxicity and female reproductive effects were omitted from the list of references. A number of reviews of this document are available in the public docket (ICF, 2004d; O'Malley, 2004). Despite some flaws in its derivation, the TLV of 10 ppm is less than two-fold lower than the low end of the range of acceptable exposure levels based on the most sensitive reproductive endpoints (see below). This small difference is well within the uncertainty we see when extrapolating a benchmark dose from an experimental study in rats to an occupational exposure limit in humans.

We summarize the data for a number of end points found in these analyses in Table 4 below. We examined these data to assess the acceptability of nPB use in the metals, electronics, and precision cleaning end uses reviewed in this final rule. These data indicate that, once uncertainty factors are applied consistent with EPA guidelines, the lowest levels for acceptable exposures would be derived for reproductive effects.[6] The data also indicate that a level sufficient to protect against male reproductive effects (e.g., reduced sperm motility) would be in a range from 18 to 30 ppm, in the range of 17 to 22 ppm to protect against female reproductive effects (e.g., estrous cycle length), and at approximately 20 ppm for effects related to reproductive success (live litter size).

TABLE 4.—SUMMARY OF ENDPOINTS USING BENCHMARK RESPONSE MODELING

Endpoint [a]	Study	BMDL[b] (ppm)	Human equivalent concentration (HEC)[c] (ppm)
Liver Effects [d]			
Liver vacuolation in males (F_1 offspring generation).	WIL, 2001 as analyzed in ICF, 2002	110	116
Liver vacuolation in males (F_0 parent generation).	WIL, 2001 as analyzed in ICF, 2002	143	150
Liver vacuolation	ClinTrials, 1997b as analyzed in ICF, 2002 and Stelljes & Wood, 2004	226	170
Reproductive Effects—Male			
Sperm motility (F_1 offspring generation).	WIL, 2001 as analyzed in ICF, 2002	169	177
	WIL, 2001 as analyzed in Stelljes & Wood, 2004	156	164
Sperm motility (F_0 parent generation)	WIL, 2001 as analyzed in ICF, 2002	282	296
	WIL, 2001 as analyzed in Stelljes & Wood, 2004	263	276
Prostate weight (F_0 parent generation).	WIL, 2001 as analyzed in TERA, 2004	190	200
Sperm count	Ichihara *et al.*, 2000b as analyzed in Stelljes & Wood, 2004	232	325

[5] Vendors of nPB-based products have recommended a wide range of exposure limits, from 5 ppm to 100 ppm (Albemarle, 2003; Chemtura, 2006; Docket A–2001–07, item II–D–19; Enviro Tech International, 2006; Farr, 2003; Great Lakes Chemical Company, 2001).

[6] By EPA guidelines, we would apply an uncertainty factor of $\sqrt{10}$, or approximately 3, for differences between species for all health effects. We would also apply an uncertainty factor of $\sqrt{10}$ (3) for variability within the working population for reproductive and developmental effects, because, among other reasons, these conditions would not necessarily screen out an individual from being able to work, unlike for liver or nervous system effects. Therefore, for reproductive and developmental effects, we use a composite uncertainty factor of 10. See further discussion of uncertainty factors in section V.B.3 below.

TABLE 4.—SUMMARY OF ENDPOINTS USING BENCHMARK RESPONSE MODELING—Continued

Endpoint [a]	Study	BMDL[b] (ppm)	Human equivalent concentration (HEC)[c] (ppm)
Sperm deformities (F_0 parent generation).	WIL, 2001 as analyzed in Stelljes & Wood, 2004	296	311
Reproductive Effects—Female			
Number of estrus cycles during a 3 week period (F_0 parent generation).	WIL, 2001 as analyzed in ICF, 2006a	162	170
	WIL, 2001 as analyzed in ICF, 2006a	208	218
Estrous cycle length (F_1 offspring generation) [d].	WIL, 2001 as analyzed in TERA, 2004	400	420
Estrous cycle length (F_0 parent generation) [e].	WIL, 2001 as analyzed in TERA, 2004	210	220
No estrous cycle incidence (F_1 offspring generation).	WIL, 2001 as analyzed in TERA, 2004	180	189
No estrous cycle incidence (F_0 parent generation).	WIL, 2001 as analyzed in TERA, 2004	480	504
Reproductive Effects—Reproductive Success			
Decreased live litter size (F_1 offspring generation).	WIL, 2001 as analyzed in TERA, 2004	190	200
Decreased live litter size (F_2 offspring generation).	WIL, 2001 as analyzed in TERA, 2004	170	179
Pup weight gain, post-natal days 21 to 28 (F_1 offspring generation).	WIL, 2001 as analyzed in TERA, 2004	180	189
Developmental Effects			
Fetal body weight	WIL, 2001 as analyzed in TERA, 2004	310	326
Fetal body weight	WIL, 2001 as analyzed in CERHR, 2002a	305	320
Nervous System Effects			
Hindlimb strength	Ichihara *et. al.*, 2000a as analyzed in Stelljes and Wood, 2004	214	300

[a] Unless explicitly stated, data are from a parental generation. Of the studies analyzed, only the WIL, 2001 study has multiple generations to be analyzed.
[b] The benchmark response value represents a specified level of excess risk above a control response.
[c] When considering workplace exposures, the human equivalent concentration is the BMDL, adjusted to apply to a 40-hour work week in which workers are exposed for 8 hours a day for five days per week. Animals in the WIL, 2001 study were exposed for 6 hours a day, 7 days a week. Animals in the Ichihara, 2000a and 2000b studies were exposed for 8 hours a day, 7 days a week. Animals in the ClinTrials, 1997b study were exposed for 6 hours a day, 5 days a week.
[d] After applying an uncertainty factor of 3 for animal to human extrapolation, acceptable levels of exposure to protect against liver effects would be in the range of 39 to 57 ppm.
[e] Omits data from those animals that have stopped estrous cycling altogether (TERA, 2004).

These more recent evaluations do not change EPA's acceptability determination for solvent cleaning. As discussed below, users of solvent cleaning equipment are reliably able to achieve exposure levels well below our proposed AEL of 25 ppm in the June 2003 NPRM and therefore we expect nPB users in the metals, electronics, and precision cleaning end uses to be able to achieve acceptable exposure levels. Concentrations of nPB emitted from industrial solvent cleaning equipment were found to be below 25 ppm in roughly 88% of 500 samples on an 8-hr time-weighted average, below 18 ppm in 81% of these samples, and below 10 ppm in roughly 70% of these samples (U.S. EPA, 2003).

Based on review of the previously available information and information submitted in comments to the NPRM, the Agency believes that its derivation of 18 ppm as a starting point in the development of a recommended acceptable exposure level is still valid. For purposes of assessing the acceptability of nPB use in solvent cleaning applications, the Agency evaluated whether exposure levels expected to result from solvent cleaning would approach either the 2003 proposed recommended AEL of 25 ppm, or the more conservative starting point of 18 ppm which was derived from the Agency's original risk analysis. We also evaluated any potential risks to the general population associated with nPB use as a solvent.

1. Workplace Risks

EPA believes that the great majority of users of nPB in metals cleaning, electronics cleaning, and precision cleaning have been able to attain exposure levels of well below 25 ppm, the proposed AEL in the 2003 NPRM, with their existing equipment. Recently measured exposure levels for nPB are much lower than historic exposure data from the 1970s and 1980s for metals cleaning and electronics cleaning (ICF, 2006a); this reflects both improvements in industrial hygiene practices and improvements in cleaning equipment since 1994 spurred by the National Emission Standard for Hazardous Air Pollutants for Halogenated Solvent Cleaning (59 FR 61801). Concentrations

of nPB emitted from industrial solvent cleaning equipment were found to be below 25 ppm in roughly 88% of 500 samples on an 8-hr time-weighted average, below 18 ppm in 81% of these samples, and below 10 ppm in roughly 70% of these samples (U.S. EPA, 2003).

One nPB supplier provided evidence that on the few occasions when nPB concentrations from vapor degreasers were higher than the company's recommended AEL of 25 ppm, users were able to reduce exposure easily and inexpensively by changing work practices, such as reducing drafts near the cleaning equipment (Kassem, 2003). The ability to meet the workplace exposure limit depends on: (1) The features of the cleaning equipment used, such as the presence of secondary cooling coils; and (2) the work practices, such as avoiding drafts near cleaning equipment and lifting cleaned pieces out slowly from the cleaning equipment. Workplace controls could include, but are not limited to, the use of the following: Covers on cold-cleaning and vapor degreasing equipment when not in use; devices to limit air movement over the degreaser; and/or a lip-vent exhaust system to capture vapors and vent them out of the room. Training workers in industrial hygiene practices and in the proper use of cold cleaning and vapor degreasing equipment, as well as warning workers of the symptoms that may occur from over-exposure to nPB, will also help reduce exposure. Therefore, we expect that users of nPB in the solvent cleaning sector following typical industry practices and using typical equipment for vapor degreasing will continue to meet acceptable exposure levels and to use nPB safely without regulatory requirements. This is the approach the SNAP program has taken with many other solvents where users are readily able to meet workplace exposure limit that will protect human health and there is no enforceable OSHA PEL (*e.g.*, HFC–365mfc, HFC–245fa, heptafluorocyclopentane, ketones, alcohols, esters, hydrocarbons, etc.). Based on the available exposure data and current industry practices, EPA believes that users of nPB as an industrial solvent for metals cleaning, electronics cleaning, and precision cleaning are likely to be exposed to concentrations of nPB well below the proposed AEL of 25 ppm from the 2003 NPRM.

2. General Population Risks

In the 2003 NPRM, the Agency provided analyses demonstrating that people living in the immediate vicinity of a facility using nPB in spray adhesives would have exposures below the community exposure guideline of 1 ppm (68 FR 33300–33301). The community exposure guideline was derived considering both sperm motility and liver effects in the WIL (2001) 2-generation study using EPA's reference concentrations (RfC) guidelines (U.S. EPA, 1994b). Since the general population would not be exposed in excess of the community exposure guideline from a highly emissive application, the less emissive uses such as metals, electronics, and precision cleaning would create insignificant exposures (well below 1 ppm). Thus, we believe that proper use of nPB in solvent cleaning would not pose measurable risks to the general population.

V. How is EPA responding to comments on the June 2003 NPRM?

In this section, EPA responds to comments on the major issues in the June 2003 NPRM. A complete response to comments is in docket EPA–HQ–OAR–2002–0064.

A. EPA's Acceptability Decision

There was no consensus among commenters about whether EPA should find nPB acceptable, acceptable subject to use conditions, or unacceptable in the various end uses listed in the proposal. Some commenters raised concerns about specific end uses, particularly aerosols and adhesives. Others supported finding nPB acceptable in solvents cleaning and in adhesives. We are not taking final action in this rule with respect to nPB as a substitute in aerosols or adhesives. We will respond to any comments regarding those end uses at the time we take final action for aerosols and adhesives.

Comment: Several commenters supported EPA's proposed approval of nPB under the SNAP program in various end uses. In contrast, two commenters opposed EPA's proposed acceptability determination in all end uses, including solvent cleaning, citing concerns about exposure and the toxicity of nPB. Another commenter stated that applications cited in the proposal (e.g., electronics and metals cleaning, label removal and spray cleaning) are not suitable for use of nPB. This commenter reasoned that if nPB provides unique performance characteristics, its uses should be limited to non-emissive and low-volume applications. A commenter from a company that markets nPB as a chemical intermediate but not as a solvent, noted that his company recognizes the health concerns associated with nPB, and thus his company continues to prohibit the sale of nPB to customers with dispersive uses. Another commenter stated that nPB is dangerous to the ozone layer and workers and urged EPA to find a safe substitute.

Response: EPA believes nPB may be found acceptable under the SNAP program only in those end uses where it has been shown to be used safely, as compared with other substitutes that are currently or potentially available. We find this to be the case for metals cleaning, electronics cleaning, and precision cleaning.

Comment: Several commenters agreed with EPA's proposed approval for nPB in metal cleaning, electronics cleaning, and precision cleaning end uses. One specifically reported that his company's industrial hygiene program for nPB-based solvents in metal and electronics cleaning has conducted extensive air sampling, and that the majority of the samples have shown values well below 25 ppm. This commenter also noted that, in those few workplaces where higher levels were found, adoption of recommended workplace ventilation and handling practices produced acceptable subsequent sample values. Thus, this commenter believes that exposures can be controlled to protective levels.

One commenter expressed concerns over the approval of nPB as acceptable for use in solvent cleaning, maintaining that toxicity data is insufficient to be convincing that long-term effects will not be a concern. Two other commenters did not support EPA's proposal to find nPB acceptable. One of the commenters concurred with EPA that exposures from manual wipe cleaning will not be acceptable and that nPB should not be used in such operations. Another commenter opposed EPA's proposed acceptability determination for solvent cleaning, stating that use of nPB in applications such as electronics and metals cleaning, label removal, and spray cleaning is not appropriate.

Response: EPA agrees with those commenters who said nPB should be acceptable for use in metal cleaning, electronics cleaning, and precision cleaning. By our definition of the solvent cleaning sector, such users are cleaning using industrial cleaning equipment. For an organic solvent, this means a vapor degreaser or an automated cold cleaning machine. Emissions from vapor degreasers can be controlled both through improving equipment (increasing the freeboard, adding cooling coils, or adding a lift that raises cleaned pieces slowly) and through improved work practices (leaving the vicinity of the vapor degreaser when done with work, tipping

work-pieces so they do not catch solvent, or lifting cleaned pieces out slowly).

In solvent cleaning equipment, exposure data show that nPB can meet an exposure level well below 25 ppm, even at levels of 5 ppm or less, the majority of the time (U.S. EPA 2003; ICF, 2006a). Concentrations of nPB emitted from industrial solvent cleaning equipment were measure to be below 25 ppm in roughly 88% of more than 500 samples, below 18 ppm in 81% of these samples, and at or below 5 ppm in 56% of these samples (U.S. EPA, 2003). In cases where exposure levels are higher, there are simple, cost-effective changes that can be made to reduce emissions (Kassem, 2003). We agree that manual cleaning using nPB is inappropriate, because of the difficulty of controlling emissions, but manual cleaning is currently beyond the scope of the SNAP Program. EPA plans to address spray cleaning using aerosols in a new proposal.

B. Toxicity

1. Health Endpoints

Comment: A number of commenters on the June 2003 NPRM suggested that EPA should consider neurotoxicity as the endpoint in deriving the AEL for nPB (Linnell, 2003; Werner, 2003; Rusch and Bernhard, 2003; Rusch, 2003). In particular, they requested that EPA consider the study conducted by Wang (2003) and epidemiological data on neurotoxic effects of nPB.

Response: Recent data collected from occupational settings indicate that severe, possibly irreversible, neurological effects may occur at sustained concentrations of approximately 100 ppm or greater (Beck and Caravati, 2003; Majersik, 2004; Majersik, 2005), with variability in effects observed in different studies, although in most cases exposures may have been much higher. Other studies with human data are discussed above in section IV.E. Because of design and methodological limitations, such as small numbers of subjects and limited exposure information, none of the recent studies individually provides a sufficient quantitative basis to derive an AEL.

In the study on rats by Wang *et al.* (2003), measurements found a decrease in enzymes in the spinal cord and brain at 200, 400, and 800 ppm, but the animals displayed no physical or behavioral changes. Because of the lack of physical symptoms or behavioral changes, EPA does not believe that the decrease in enzyme levels in the central nervous system are toxicologically relevant. Other studies examining neurological effects of nPB showed those effects to be transient and reversible at and above 200 ppm (Ichihara *et al.*, 2000a). Exposures of 200 ppm and above for three weeks had no effect on memory, learning function, or coordination of limbs (Honma, 2003); the effect of spontaneous locomotor activity seen in this study at 50 ppm and above was not considered adverse by the authors. In other studies, neurological effects were absent after extended periods of exposure—after 28 days of exposure at concentrations > 400 ppm (ClinTrials, 1997a) and after 90 days of exposure at concentrations up to 600 ppm (ClinTrials, 1997b). Thus, although neurological effects have been associated with nPB exposure, the data are currently insufficient to quantify and set an AEL based on this endpoint. More recent data does not change EPA's acceptability determination for solvent cleaning.

Comment: One commenter on the June 2003 NPRM requested that EPA evaluate a study by Yamada et al (2003), a study published just prior to the June 2003 NPRM.

Response: EPA reexamined Yamada *et al.*, 2003 and re-evaluated the literature (Ichihara *et al.*, 1999, 2002, 2004a,b; Sekiguchi, 2002, Yamada *et al.*, 2003; WIL, 2001). Multiple benchmark analyses found a statistically significant decrease in the number of estrous cycles and increase in estrous cycle length associated with nPB exposure, consistent with other reproductive endpoints, namely reductions in sperm motility, decreased live litter size, and change in prostate weight (ICF, 2002a; ICF, 2006a; Stelljes and Wood, 2004; TERA, 2004). These more recent evaluations, which could lead to an HEC of 170 ppm and an AEL of 17 ppm, do not change EPA's acceptability determination for solvent cleaning, since the evidence supports the ability of users in this end use to consistently meet such a level.

Comment: Some commenters stated that data from the F1 generation is inappropriate for calculating occupational exposure, citing statements from some toxicologists that use of effects on adult F1 generation animals is inappropriate. They also stated that EPA has not required this for other chemicals and that the resulting value is more conservative than what is normal and appropriate for industrial toxicology (Morford, 2003d and e; Ruckriegel, 2003). One commenter claims that because EPA's review of nPB differed from EPA's review of other SNAP alternatives, the process violates equal protection (Morford, 2003d and e). Others stated that sperm motility effects on the F1 generation are appropriate to consider (Risotto, 2003; Farr, 2003), particularly because of the potential for *in utero* effects and because of the consistent presence of these reproductive effects in both generations and at multiple levels.

Response: EPA is not finalizing a specific AEL for the purposes of this final rule. EPA acknowledges that using data from the F1 offspring generation may be conservative because the pups in the F1generation were exposed to nPB between weaning and sexual maturity (WIL, 2001). During occupational exposure, this period of exposure would not occur because children under age 16 are not allowed to work in industrial settings. However, EPA believes that because of the potential for *in utero* effects that would only be seen in the offspring generation, looking only at the F0 parental generation could underestimate the adverse health impacts of a chemical. Therefore, it was appropriate for us to consider effects seen in both the F0 parental generation and the F1 offspring generation. Further, effects on sperm motility in the parental and offspring generations are seen at levels generally consistent with multiple reproductive effects seen in both generations and both sexes exposed to nPB, such as estrous cycle length, lack of estrous cycling, the number of estrous cycles in a given period of time, fertility indices, and the number of live pup births (TERA, 2004; ICF, 2006a; SLR International, 2001).

We also note that different substances have different toxicological effects and those effects must be considered based on the best scientific information and methodologies available. It is incorrect to claim that such reviews, which focus on the effects of different substances, resulted in disparate treatment of nPB [7].

2. Adjustments to Acceptable Exposure Level Based on Risk Management Principles

In the 2003 NPRM, EPA derived 18 ppm as the starting point for an acceptable exposure level based on reduced sperm motility in the offspring generation of animals exposed to nPB (WIL, 2001). Following a SNAP program principle that alternatives should be restricted only where it is ''clearly more harmful to human health and the

[7] We interpret the commenter's use of the term ''equal protection'' to mean that the commenter beleives that EPA has performend a harsher review of nPB than it has for other substitutes and not a claim that EPA has violated the 14th Amendment of the Constitution, which applies only to the states and not the Federal Government.

environment than other alternatives,'' we noted that ''a slight adjustment of the AEL may be warranted after applying judgment based on the available data and after considering alternative derivations''(69 FR 33294, 33295). The Agency proposed an upward adjustment of the AEL to 25 ppm based on principles of risk management, and based, among other things, on a determination that 25 ppm was between the level based on the most sensitive endpoint (sperm motility in the F1 offspring generation) and the second most sensitive endpoint (sperm motility in the F0 parental generation). We stated further that ''18 ppm is a reasonable but possibly conservative starting point, and that exposure to 25 ppm would not pose substantially greater risks, while still falling below an upper bound on the occupation[al] exposure limit.''

Comment: Commenters responded that: (1) The SNAP program does not create a presumption in favor of substances that are already available on the market, especially where other alternatives exist (Linnell, 2003; Werner, 2003); (2) EPA's AEL derivation of 18 ppm is not conservative enough (Werner, 2003; Risotto, 2003) and further adjustment upward further reduces protection; (3) the data do not support adjusting the AEL upward (EPA–HQ–OAR–2002–0064–0003); (4) EPA should first use the same methodology in establishing an AEL as for other chemicals to ensure that the program's guiding principle in comparing risks is not compromised (Werner, 2003); and (5) EPA should reconsider whether industrial exposures consistently occur or can be controlled at 25 ppm (Werner, 2003). No commenters specifically supported adjusting the AEL upward.

Response: EPA is not finalizing a specific AEL for the purposes of this final rule. In a separate proposed rulemaking for the aerosol, adhesive and coatings end uses, we will be providing the public an opportunity to comment on a range of exposure level values that are comparable to the levels discussed in the June 2003 proposal (69 FR 33295) that the Agency would consider to be acceptable. Because we have concluded that end users in the solvent sector are routinely able to meet even the lowest exposure level we considered recommending (U.S. EPA, 2003), we do not need to make a final determination as to the appropriate level for purposes of this rulemaking.

3. Uncertainty Factors

According to EPA risk assessment guidance for RfC (EPA 1994a), uncertainty factors of up to 10 may be applied to the ''human equivalent concentrations (which accounts for worker exposure patterns of 8 hours per day for 5 days a week), for each of the following conditions:

(1) Data from animal studies are used to estimate effects on humans;

(2) Data on healthy people or animals are adjusted to account for variations in sensitivity among members of the human population (inter-individual variability);

(3) Data from subchronic studies are used to provide estimates for chronic exposure;

(4) Studies that only provide a LOAEL rather than a NOAEL or BMD; or

(5) An incomplete database of toxicity information exists for the chemical.

Comment: Some commenters on the June 2003 NPRM stated that EPA should use an uncertainty factor of 1 or 2 to extrapolate from animals to humans (Weiss Cohen, 2003), while others suggested uncertainty factors of 2 or 3 for pharmacokinetics, or an overall uncertainty factor of 10 for rat to human extrapolation because of a lack of information on the metabolism and mode of action of nPB and because the rat is an insensitive model for effects on male reproduction in humans (Werner, 2003; Rusch and Bernhardt, 2003).

Response: EPA believes that two uncertainty factors are appropriate for this database to account for (1) physiological differences between humans and rats; and (2) variability within the working population. EPA RfC guidelines state that an uncertainty factor of 10 may be used for potential differences between study animals and humans. This factor of 10 consists in turn of two uncertainty factors of 3—the first to account for differences in pharmacodynamics[8] and the second to account for differences in pharmacokinetics[9] between the study animal and humans. (The value of three is the square root of 10 rounded to one digit, with 10 representing an order of magnitude [EPA,1994a, pp. 1–6, 4–73]. In practice, EPA uses the square root of 10 when there are two or four uncertainty factors of 3, yielding a total uncertainty factor of 10 or 100, and we use a value of 3 when multiplying by other uncertainty factors.) In general, EPA's RfC guidelines state that for the uncertainty factor extrapolating from animal to human data, ''Use of a 3 is recommended with default dosimetric adjustments.'' (U.S. EPA, 1994b, p. 4–73). By EPA RfC guidelines (US EPA, 1994b), no adjustment for differences in pharmacokinetics is necessary in this instance because the blood/air partition coefficient[10] for nPB in the human (7.1) is less than in the rat (11.7), indicating that the delivered dose of nPB into the bloodstream in rats is slightly higher than in humans. EPA has seen no data to indicate that (1) the toxicity is not directly related to the inhaled parent compound in the arterial blood, or that (2) the critical metabolic pathways do not scale across species, with respect to body weight, in the same way as the ventilation rate. Consistent with Appendix J of EPA's RfC guidelines for an inhaled compound that exerts its effects through the bloodstream, EPA applies an uncertainty factor of 1 for pharmacokinetics and an uncertainty factor of 3 for differences between animals and humans.

Recent studies provide additional data regarding metabolism of nPB in rats and mice (RTI, 2005), but data on human metabolism are still lacking. One analysis of these metabolic data suggested that mice are less sensitive to the effects of nPB than rats and hypothesized that humans would also be less sensitive than rats (Stelljes, 2005). This analysis makes numerous assumptions about toxic nPB metabolites and metabolic activation pathways that have not been confirmed by experimental data. A review of this analysis is available in the public docket (ICF, 2006c). Despite the difference in metabolic pathways for nPB in mice and rats (RTI, 2005), EPA finds no significant species-specific differences in toxicity exist between rats and mice at inhaled concentrations <500 ppm for 13 weeks (NTP, 2003; ICF, 2006c). However, these metabolic and subchronic inhalation studies conducted under the National Toxicology Program did not specifically examine for reproductive toxicity or nPB metabolism in target organs that control reproductive function. In summary, there is little available data about the metabolic activation or reactive metabolites responsible for reproductive toxicity in rodents. Similarly, for nPB, there is little information available about differences and similarities between rodents and humans. Given this circumstance, EPA assumes, in the absence of evidence to the contrary, that nPB toxicity is directly related to the inhaled parent

[8] Pharmacodynamics refers to the biochemical and physiological effects of chemicals in the body and the mechanism of their actions.

[9] Pharmacokinetics refers to the activity or fate of chemicals in the body, including the processes of absorption, distribution, localization in tissues, biotransformation, and excretion.

[10] The blood/air partition coefficient is the ratio of a chemical's concentration between blood and air when at equilibrium.

compound in the arterial blood and that the critical metabolic pathways scale across species in a manner similar to the ventilation rate (U.S. EPA, 1994b). Therefore, the Agency applied an uncertainty factor of 1 to account for interspecies differences in pharmacokinetics.

Given the available data on the blood/air partition coefficient and EPA RfC guidance in the absence of other information, EPA is applying the same rationale used for other compounds reviewed under EPA's SNAP program with a comparable amount of data where an uncertainty factor of 1 for pharmacokinetics was applied. To account for uncertainty in pharmacodynamics of nPB, EPA is applying the default uncertainty factor of 3. This follows the procedures in EPA's RfC guidelines for situations where there are no data to compare pharmacodynamics in rats versus humans (U.S. EPA, 1994b). Recently published data on humans and rodents do not decrease the uncertainty regarding the pharmacodynamics of nPB; therefore, modification of the uncertainty factor of 3 for differences between species was not justified.

Comment: One commenter stated that EPA did not cite any data that describes the size, condition, or existence of a subpopulation of men especially sensitive to the effects of nPB. In addition, this commenter asserted that sensitive populations are not traditionally considered when deriving an OEL, and that EPA has never mentioned a concern with sensitive subpopulations in previous SNAP reviews. Another commenter said that there is no evidence to support the assertion that nPB exposure below a 100 ppm average will further reduce sperm count or that the removal of nPB exposure will improve sperm count.

Response: EPA disagrees with the comments. There are preexisting reproductive conditions as well as significant variability in fertility among otherwise healthy adults in the workplace. Both male and female reproduction have been shown to be adversely affected by aging, with effects on the ovarian cycle and on sperm motility as major factors changing with increasing age for women and men, respectively (Dunson *et al.*, 2002). Adding damage from other factors, such as smoking or occupational exposure to chemicals such as nPB, therefore, can potentially harm an individual's ability to reproduce further (Dunson, *et al.* 2002). EPA did not issue a proposal based on sperm count, so that comment is not relevant to this rule. In addition, we note that EPA has used uncertainty factors in the past to protect sensitive subpopulations on other chemicals reviewed under the SNAP program (*e.g.*, trifluoroiodomethane at 60 FR 31092, 61 FR 25585 and IoGas™ Sterilant Blends at 69 FR 58903). For deriving AELs from health endpoints such as liver effects and neurotoxicity, the SNAP program typically has assigned an uncertainty factor of 1 for sensitive subpopulations because we assume that individuals who are especially susceptible to these effects will have greater difficulty working than most people. However, there is no connection between the ability to reproduce and the ability to work in the industrial sectors discussed in this rule. Thus, we find it appropriate to require an uncertainty factor greater than 1 for reproductive effects for variability within the working population.

Comment: Some commenters said that an uncertainty factor of 1 is appropriate for variability within the working population because sensitive subpopulations will not be present in the working population (Stelljes, 2003, Morford, 2003e). Other commenters stated that there will be very little difference in variability between the worker population and the general population and that it is unclear why EPA selected an uncertainty factor of 3 instead of 10 (Werner, 2003). Commenters suggested uncertainty factors for variability in the working population of 1, 2, and 5 (Stelljes, 2003, Weiss Cohen, 2003, Werner, 2003).

Response: EPA disagrees with the commenters. EPA's RfC guidelines recommend an uncertainty factor of 10 to account for intraspecies variability within the general population. However, in developing an AEL, EPA's focus is on worker exposure, which excludes some particularly vulnerable populations, such as children, most adolescents, and the elderly. Thus, we believe that a full uncertainty factor of 10, as for the general population, may be higher than necessary to protect workers. Certain individuals in the general population but not in the working population that might be particularly vulnerable would include children and adolescents under age 16 and individuals with immune deficiency disorders. However, because of variability in reproductive function due to factors present among workers, such as aging, smoking, and sexually transmitted disease (Dunson *et al.*, 2002), and because there is no screening of workers that would make workers more likely to have healthy reproductive systems than non-workers of the same age, we believe than an uncertainty factor of 1 is not sufficiently protective. Under EPA guidelines, 3 is a default value for an uncertainty factor where there is indication that a value less than an order of magnitude (10) but greater than one is appropriate, and where the available data are not sufficiently quantified to select a specific value.

4. Other Analyses of nPB's Toxicity

Comment: One commenter stated that documents by Drs. Doull, Rozman, Stelljes, Murray, Rodricks, and the KS Crump Group were not acknowledged (Morford, 2003d,e, and f). Another commenter requested that EPA take into account the scientific presentations presented by Drs. Doull, Rozman and Stelljes and mentions a review by Dr. Rodricks (Weiss Cohen, 2003).

Response: EPA specifically mentioned and responded to the occupational exposure limit recommendations from Drs. Rozman, Doull, and Stelljes in the preamble to the June 2003 NPRM at 68 FR 33298–33299. In addition, EPA included more detailed written responses to these derivations and the evaluation by Dr. Rodricks in the online docket prior to proposal (EPA–HQ–OAR–2002–0064–0017, –0018, and –0019). Here are abbreviated responses to the various documents cited by the commenter:

- Drs. Doull and Rozman's letter dated August 24, 2001, stating that a two-generational reproductive study is not appropriate (Docket A–2001–07, item II–D–26)—Drs. Doull and Rozman do not provide a rationale for their statement. Their statement is in conflict with their AEL derivation, in which they consider use of the F1 generation of the WIL Laboratories two-generation study. As discussed above in section V.B.1, EPA believes that data from a two-generation reproductive study are appropriate in developing a guideline for the workplace in order to assure that workers and their children are protected from any adverse health effects of workplace exposure, including exposure *in utero.* We acknowledge that this value may be more conservative than considering data only from the parental generation.
- Drs. Doull and Rozman's critique of ICF's AEL derivation (II-D–41b)—Drs. Doull and Rozman's primary stated reason for rejecting ICF Consulting's evaluation is that it does not reflect their own AEL derivation. They reiterate that they find neurotoxicity to be the appropriate basis for an AEL without addressing the reasons that ICF's derivation provides for finding reproductive toxicity to be of greater concern than neurotoxicity. We disagree with Doull and Rozman's conclusion that neurotoxicity is the more

appropriate endpoint for several reasons: (1) The human data are insufficient to draw conclusions because of a small number of subjects, limited exposure information, and lack of statistical significance; (2) the animal data on neurotoxicity are inconsistent and equivocal concerning the level at which nervous system effects occur, and they indicate that neurotoxic effects may be reversible; and (3) neurotoxicity is a less sensitive endpoint than reproductive effects. However, if we had used neurotoxicity as the endpoint for an AEL, we would have reached the same acceptability determination for solvent cleaning.

The basis of EPA's June 2003 NPRM is different from either one of these documents because it uses a different endpoint from Doull and Rozman's derivation (2001) and an uncertainty factor of 3 instead of 2 to 3 for variability within the working population (Doull and Rozman, 2001; ICF, 2002a). According to EPA guidance on establishing uncertainty factors, if a uncertainty factor is between 1 and 10 and the data are not sufficient to quantify the uncertainty between those values, the default uncertainty factor to be used is 3 (U.S. EPA, 1994b).

• Drs. Rozman and Doull's derivation of an AEL (II–D–63)—EPA discussed our evaluation of this document at length in the preamble of the June 2003 NPRM at 68 FR 33298. In particular, we disagree with Rozman and Doull's selection of the most sensitive endpoint. Rozman and Doull concluded that reproductive toxicity should not be considered the most sensitive endpoint, stating that a National Institute for Occupational Safety and Health (NIOSH) evaluation found that no human beings at a facility using nPB-based adhesives experienced reproductive health effects from the nPB. However, the NIOSH study in fact concluded that the survey questions would not be sufficient to determine if there were reproductive health effects, which is significantly different from saying that there was no health effect. The expert panel for the CERHR looked at the NIOSH report and a wide range of human and animal studies on nPB; in contrast to Rozman and Doull, the expert panel concluded that there was insufficient information on reproductive effects of nPB on humans and that the results of tests on animals were considered appropriate for evaluating potential reproductive health effects on humans.

Further, EPA disagrees with the specific AEL value of 60 to 90 ppm that Rozman and Doull derived. They used data on headaches from a draft NIOSH survey, selecting an endpoint of 190 ppm. However, the data in the final survey were not sufficient to detect any dose-response with any statistical significance (Custom Products HHE, II–A–49). Further, more recent studies on human exposure to nPB have found neurotoxic effects occurring at levels at least as low as 86 ppm, and possibly lower than 60 ppm (Ichihara 2004a, Beck and Caravati 2003). These data would indicate that an AEL of 60 to 90 ppm is not sufficiently protective against neurotoxic effects. Drs. Rozman and Doull themselves now suggest that an AEL of 25 ppm may be more appropriate for protecting against neurotoxic effects (Rozman and Doull, 2005).

• Dr. Rodricks' AEL derivation and comments on ICF's derivation (II–D–65)—EPA reviewed Rodricks (2002) in developing its June 2003 NPRM, although the study was not explicitly mentioned in that preamble. Rodricks (2002) suggests an AEL of 60 to 88 ppm for nPB, based on male reproductive effects. Dr. Rodricks says that the most sensitive endpoint that is relevant for occupational exposure is data from the parent generation of the two-generation reproductive study. Dr. Rodricks suggests that an uncertainty factor of only 1 to 2 is necessary for animal to human extrapolation because one should consider animals and workers of average sensitivity; although such an argument presumably could be made for any chemical used in the workplace, EPA has not seen other AEL derivations that use this approach. Dr. Rodricks appears to agree with ICF that an uncertainty factor for variability in reproductive function in the human population is reasonable, although he suggests a factor of 2 instead of the range of 2 to 3 in ICF's derivation. Dr. Rodricks and colleagues previously recommended an AEL for nPB of less than 10 ppm, and at that time suggested an uncertainty factor of 10 for variability in reproductive function in the human population (A–91–42, X–B–53). We discussed above the use of data from both the F0 and F1 generations and the use of an uncertainty factor of 3 for variability within the working population.

• Dr. Stelljes's critique of ICF's AEL derivation (II–D–41a)—Dr. Stelljes states that ICF should have used data from the parent generation rather than from the offspring generation because ''data from F1 animals is not directly applicable to a workplace exposure setting because both parents would not be exposed to nPB on a daily basis over the reproductive cycle, and also have their offspring exposed daily from weaning.'' EPA disagrees in part with Dr. Stelljes's reasoning. Data from F0 animals may not be sufficiently protective because effects on the F0 animals will not reflect effects of *in utero* exposure. However, we agree that exposure during weaning is not reflective of workplace exposure, and thus, data from F1 animals may be conservative. EPA proposed 25 ppm instead of 18 ppm in part to take this conservatism into account.

• Dr. Stelljes's (SLR International's) AEL derivation (II–D–13)—EPA discussed this AEL derivation at length in the preamble to the proposed rule at 68 FR 33298. We agreed with Dr. Stelljes's BMD modeling and his selection of reduced sperm motility in the F1 offspring generation of the WIL Laboratories study as the most sensitive endpoint. However, we disagree with Dr. Stelljes's selection of uncertainty factors. There is no information showing that human sex cells are less sensitive to nPB than rat sex cells, and there is considerable evidence that human males have less reproductive capacity than male rats (U.S. EPA, 1996). Therefore, it is appropriate to add an uncertainty factor of at least 3 to account for differences between rats and humans. Further, Stelljes dismisses the use of an uncertainty factor for differences within the human population. Although we agree that children and the elderly would not be present in the workplace as sensitive subpopulations, there certainly is variability in the reproductive abilities of different working-age people that would have no impact on the individual's ability to be hired or to work; therefore, EPA expects there is some variability in the susceptibility of working individuals to the effects of reproductive toxicants. EPA believes that male reproductive capacity is very susceptible to chemical insult (U.S. EPA, 1996).

• Dr. Murray's opinion on parent and offspring generations (II–D–58)—Dr. Murray says that because the offspring generation will not yet have developed sperm while *in utero,* it is more appropriate to use data from the parent generation of the two-generation study. However, Dr. Murray does not address the possibility that nPB exposure during pregnancy could influence the production of hormones that eventually would result in sperm production. Further, Dr. Murray's response does not address potential effects on ova, which would be present while a fetus is still in its mother's womb.

• Report on uncertainty factors used by ACGIH from K.S. Crump Group (IV–D–26/OAR–2002–0064–0047 and –48)—This report concluded that EPA's

approach to selecting uncertainty factors for use in risk assessment was more transparent, with justification for each value selected, and was more consistent than the values apparently used by the ACGIH in deriving TLVs. EPA agrees with these conclusions.

Comment: A commenter states that ''an uncertainty factor of 10 is NOT 'generally' used to derive occupational exposure limits and that in fact, uncertainty factors of 3 or less or more commonly used,'' citing the K. S. Crump Group's report.

Response: In the case of the TLV that ACGIH established for nPB, ACGIH appears to set an AEL that is a factor of 10 lower than the endpoint cited as lowest (100 ppm for effects on pup weight) (ACGIH, 2005). Thus, ACGIH has used an approach for nPB consistent with the total uncertainty factor of 10 assigned by EPA.

5. Overall Stringency of the Acceptable Exposure Limit

Comment: Some commenters supported the proposed AEL of 25 ppm, stating that it was derived using appropriate conservative and cautious scientific processes. Other commenters said that the proposed AEL of 25 ppm was too high, citing uncertainties in the data, the inappropriateness of adjusting the AEL upward from 18 ppm, reports of health effects on humans, and a need for higher uncertainty factors. Other commenters said that the proposed AEL of 25 ppm was too low, citing higher AELs derived by Drs. Stelljes, Doull, Rozman, and Rodricks, NIOSH studies, and a need for lower uncertainty factors. Commenters suggested alternate AEL values ranging from 1 ppm to 156 ppm.

Response: In this final rule, EPA is not recommending an acceptable exposure limit. We have based our determination of acceptability by comparing measured exposure levels from workers using nPB in solvent cleaning to exposure levels discussed by EPA in the proposal (see section IV.E). At the levels discussed in the NRPM or higher, we find nPB acceptable for solvent cleaning. After considering the available scientific studies on toxicity, exposure data, and alternative derivations of the acceptable exposure limit, we find that the exposure levels discussed in 2003 provide sufficient protection for human health and are consistent with EPA's derivations of AELs for other chemicals reviewed under the SNAP program and EPA guidance for risk assessment.

6. Skin Absorption

In the June 2003 NPRM, EPA discussed listing nPB with a skin notation, and proposed that this was not necessary (68 FR 33295).

Comment: Several commenters on the June 2003 proposal stated that a skin notation for nPB is appropriate, while another commenter agreed with EPA's proposal that no skin notation was necessary (Smith, 2003; HESIS, 2003; Werner, 2003, Weiss Cohen, 2003). One commenter said that EPA should require manufacturers, distributors, and marketers of nPB-containing products to communicate such information on the Material Safety Data Sheets (MSDS) and the product label.

Response: We agree with the commenter that said a skin notation is not necessary. However, today's decision includes a recommendation for users to wear protective clothing and flexible laminate gloves when using nPB to address the concerns about dermal exposure.

Rat studies indicate that dermal exposure to nPB results in neither appreciable absorption through the skin (RTI, 2005) nor systemic toxicity (Elf Atochem, 1995). Unlike methyl chloride and dichlorvos, which are absorbed through the skin and could contribute to systemic toxicity (ACGIH, 1991), EPA is not including a skin notation for nPB in the information provided to users associated with this rulemaking because of the relatively low level of absorption. The ACGIH provides no skin notation in its TLV documentation for several solvents, including nPB (ACGIH, 2005), methylene chloride, and perchloroethylene, and there is no evidence that absorption through the skin is greater for nPB than for the other halogenated compounds. The TLV documentation for nPB states, ''There is no basis for a skin notation because the dermal LD50 of 1-BP was >2 g/kg.'' Further, including a statement giving advice about how to reduce skin exposure in the ''Further Information'' column of listings is likely to be more informative to workers than a skin notation.

Given the possibility that some nPB can be absorbed through the skin in humans, and that the solvent can irritate the skin, EPA encourages users to wear protective clothing and flexible laminate gloves when using nPB and encourages manufacturers, distributors, and marketers of nPB-containing products to include such precautions in their MSDSs. EPA believes that our regulatory authority for the SNAP program is over the substitution (use) of ozone-depleting substances, and thus, we do not believe we have sufficient authority to regulate the manufacturers, distributors and marketers of nPB.

7. Iso-Propyl Bromide Limit

In the June 2003 proposed rule, we proposed as a use condition that nPB formulations contain no more than 0.05% isopropyl bromide (iPB) [11] by weight because of potential health effects associated with this isomer (68 FR 33301–33302).

Comment: Two commenters said that 0.05% iPB is an appropriate and achievable limit. (Smith, 2003; Weiss Cohen, 2003). One of these commenters stated that industry test studies showed that lower limits were neither toxicologically justified nor economical. Another commenter opposed the implementation of the proposed use restriction, stating that it places an undue legal burden on end users, rather than the manufacturers of raw materials, and would not benefit worker safety. This commenter also stated that this is the only instance that SNAP has regulated residual contaminants. This commenter also suggested that EPA defer to an AEL of 1 ppm for iPB established by the government of Korea and the Japan Society for Occupational Health. Moreover, this commenter said that the difference between the acceptable iPB exposure determined by EPA and that determined by ASTM–D6368–00 is very small and, thus, EPA's proposed regulation does not add any value to existing standards. Finally, this commenter noted that epidemiological data found no adverse effect on human workers exposed to 110 ppm of iPB (Ichihara, specific study not identified by the commenter). (Morford, 2003g and h).

Response: We agree that industry has achieved this contamination limit for several years without regulation. We also agree that the concentration of iPB likely to be breathed in by workers would be below 1 ppm even if workers were exposed to concentrations of nPB at 100 ppm or more, provided that the iPB content meets the ASTM–D6368–00 standard for nPB used in vapor degreasing. Further, even if iPB were present in nPB formulations in concentrations as high as 1%, if industry meets the AEL for nPB proposed in 2003 of 25 ppm, or lower, exposures still would be at most 0.25 ppm. This is below the level of 1 ppm established by the Korean government and by the Japan Society for Occupational Health (Morford, 2003h). Therefore, we are not adopting a use condition for iPB for the solvent cleaning end uses.

[11] iPB is also referred to as 2-bromopropane, 2-propyl bromide, or 2-BP. Its CAS registry number is 75–26–3.

8. Short-Term Exposure Limit (STEL)

In the June 2003 NPRM, EPA recommended a short-term exposure limit of 75 ppm (three times the AEL).

Comment: One commenter noted that there was no indication in the various applications as to how the exposures from those operations compared to the EPA recommendation for a STEL at 75 ppm. This commenter asserted that the potential for exceeding the STEL in solvent cleaning applications appears high and should, therefore, be investigated by EPA. This commenter also stated that, depending on the results of this investigation, EPA may choose to find nPB unacceptable in metals cleaning or restrict its use to where ventilation is employed and/or personal protective equipment is worn.

Response: EPA disagrees that it is necessary to use a short-term exposure limit in determining the acceptability of nPB in solvent cleaning. Acute, short-term exposures of nPB are not of significant health concern, so long as long-term exposures are below the 8-hour TWA limit (ERG, 2004). EPA provided the STEL recommendation in the June 2003 proposal to give guidance to the user community, consistent with the following recommendation of the American Conference of Governmental Industrial Hygienists (ACGIH): ''Excursions in worker exposure levels may exceed 3 times the [threshold limit value] TLV–TWA for no more than a total of 30 minutes during a workday'' (ACGIH 1999). We note that when the ACGIH developed a TLV for nPB, they said there were no data to support a short-term exposure limit (ACGIH, 2005).

C. Ozone Depletion Potential

We proposed that, since the ODP of nPB in the continental U.S. is only 0.013 to 0.018 relative to an ODP of 0.8 for CFC-113, 0.1 for methyl chloroform, and 0.1 for HCFC-141b, nPB should not be found unacceptable because of its ODP (68 FR 33303). The Agency recognized that nPB's ODP could be much higher in tropical regions, as high as 0.071 to 0.100, but since EPA is regulating nPB used in the U.S., we made our decision based on the ODP in the continental U.S.

Comment: One commenter on the June 2003 NPRM provided information (Wuebbles, 2002) and stated that ''even if the entire amount of nPB produced in 2002 was emitted across North American, European and Asian latitudes, the resulting effects on ozone depletion would be too small to measure.'' The same commenter said that the effects on ozone would only be larger if all emissions were to occur in the equatorial region. (Morford, 2003f).

Response: EPA agrees that, based on the current usage of nPB and its ODP in the U.S., there is not a significant impact on the ozone layer.

Comment: Comments on the June 2003 NPRM expressed concern that other countries, particularly those in equatorial regions, might assume that nPB does not pose a danger to the stratospheric ozone layer if the U.S. EPA's SNAP program finds nPB acceptable (Linnell, 2003; Steminiski, 2003).

Response: Because the ODP for nPB is higher when used in the tropics (see footnote 3 above in section IV.2), we recognize the concerns raised by these commenters. However, EPA is regulating use in the U.S. and cannot dictate actions taken by other countries. For example, other countries could choose to continue to use nPB even if EPA were to find it unacceptable in the U.S. We believe the more appropriate forum to address this concern is through the Parties to the Montreal Protocol.

At the most recent Meeting of the Parties to the Montreal Protocol, the Parties made the following decision with regard to n-propyl bromide, in order to ''allow Parties to consider further steps regarding n-propyl bromide, in the light of available alternatives'' (Decision XVIII/11):

1. To request the Scientific Assessment Panel to update existing information on the ozone depletion potential of n-propyl bromide, including ozone depleting potential depending on the location of the emissions and the season in the hemisphere at that location;

2. To request the Technology and Economic Assessment Panel to continue its assessment of global emissions of n-propyl bromide, * * * paying particular attention to:

(a) Obtaining more complete data on production and uses of n-propyl bromide as well as emissions of n-propyl bromide from those sources;

(b) Providing further information on the technological and economical availability of alternatives for the different use categories of n-propyl bromide and information on the toxicity of and regulations on the substitutes for n-propyl bromide;

(c) Presenting information on the ozone depletion potential of the substances for which n-propyl bromide is used as a replacement;

3. To request that the Technology and Economic Assessment Panel prepare a report on the assessment referred to in paragraph 1 in time for the twenty-seventh meeting of the Open-ended Working Group for the consideration of the Nineteenth Meeting of the Parties. (MOP 18, 2006)

D. Other Environmental Impacts

With respect to environmental effects other than ozone depletion potential, we stated in the June 2003 NPRM that users should observe existing Federal, state, and local regulations such as those under the Resource Conservation and Recovery Act or those for compliance with the National Ambient Air Quality Standards (68 FR 33304).

Comment: Commenters stated that, until the safety of nPB has been demonstrated conclusively, more stringent controls are necessary to protect the public and the environment. In particular, these commenters said that the potential for cross-media impacts was not given adequate consideration in the proposed rule. They also stated that EPA did not address the potential for nPB to bioaccumulate in the environment or its impact on sensitive species. One commenter said that he thought it was appropriate to ensure that nPB be kept out of wastewater, and an independent contractor also mentioned concerns about water pollution. Another commenter said that nPB hydrolyzes more quickly than the chlorinated solvents, and so would have less impact on water quality. Currently, the representative's company recommends that spent solvents be incinerated, and offers free pickup and disposal of spent solvent to its customers.

Response: EPA agrees that it should not be standard practice to dispose of spent nPB in water, and that nPB should be kept out of wastewater to the extent possible. This may be achieved by recycling or through incineration. These also are good practices with other spent halogenated solvents, whether or not they are specifically listed as hazardous wastes.

EPA's PBT (persistence/bioaccumulation/toxicity) profiler tool suggested that, based on its structure, nPB would not be considered persistent in water or soil and that nPB would have a low tendency to bioaccumulate (8.3, where 1000 is considered bioaccumulative and greater than 5000 is considered very bioaccumulative). Further, the calculated bioconcentration factor for nPB is only in the range of 18 to 23 (HSDB, 2004; ICF, 2004a). Under EPA's criteria for listing chemicals on the Toxics Release Inventory, this would not be a level of concern (ICF 2004a, EPA 1992). Therefore, we conclude further testing for bioaccumulation of this chemical is not needed before rendering a decision for

use of nPB in the solvent cleaning sector.

Currently, the estimated amount of nPB used in the U.S. in SNAP sectors is on the order of 10 to 12 million pounds per year, which corresponds to roughly 1% of the organic solvent cleaning market, a relatively small amount. It is unlikely that very large amounts of nPB will enter and remain in the nation's water supply, because:

- nPB tends to evaporate quickly, with a calculated half-life of 3.4 hours in a river or 4.4 days in a lake due to volatilization.
- nPB hydrolyzes readily, with a measured hydrolysis half-life of 26 days at 25° C and pH 7.
- If released to the atmosphere, nPB will exist solely in the vapor phase based on its vapor pressure of 110.8 mm Hg. Thus, it is unlikely to be redeposited in rainwater in significant amounts. (PBT Profiler, 2007; ICF, 2004a)

Further, because nPB is short-lived compared to ODS and many ODS substitutes, it is unlikely that nPB will create a substantially greater impact than other acceptable cleaning solvents and than the ODS it replaces. EPA is required by the Clean Air Act to consider whether a replacement for an ODS is more harmful, overall, to human health and the environment than other available or potentially available substitutes. The available information shows that nPB will not be more hazardous than other available, acceptable solvents if it pollutes water or soil.

E. Flammability

In the June 2003 NPRM, we proposed that nPB should not be restricted or found unacceptable because of flammability (68 FR 33303). EPA specifically requested data concerning the flashpoint of pure nPB, including the test method used to provide the data.

Comment: Several manufacturers of nPB and nPB-based solvents and an independent contractor stated that nPB has no flash point under a number of accepted consensus standards for flash point. In support of these statements, the manufacturers of nPB and nPB-based solvents provided flash point test data from a number of different test methods (ASTM D 92 open cup, ASTM D56 Tag closed cup, and ASTM D93 Pensky-Martens closed cup).

Response: EPA agrees. The test results provided by the commenters indicates that nPB has no flash point using a number of standard test methods, including ASTM D 92 open cup, ASTM D56 Tag closed cup, and ASTM D93 Pensky-Martens closed cup. Based on these data, we find that nPB is not flammable under standard test conditions. EPA concludes that nPB should not be considered unacceptable on the basis of flammability risks.

F. Legal Authority to Set Exposure Limits

Comment: Two commenters stated that EPA has no jurisdiction to develop any AEL designed to be applicable to a workplace environment, and that this right belongs to OSHA.

Response: As an initial matter, EPA notes that it has not established an AEL applicable to the workplace in this rule. Rather, EPA reviewed the available information to determine what a safe workplace exposure might be in order to determine whether use of nPB in the solvent cleaning sector poses substantially more risk than use of other available substitutes. The analysis performed by EPA imposes no binding obligation on anyone, particularly in this case where EPA determined that nPB is acceptable for use in the solvent cleaning sector.

Although the Occupational Safety and Health Act (OSH Act) gives the Occupational Safety and Health Administration (OSHA) authority to issue a rule setting or revising an occupational safety or health standard (29 U.S.C. 655(b)), it does not prohibit other Federal agencies from reviewing the safe level of exposure under other statutes that require consideration of the human health and environmental effects of a substance. Conversely, although section 4(b)(1) of the OSH Act prohibits OSHA from regulating a working condition addressed by another federal agency's regulations affecting occupational safety or health, this provision is overridden with respect to EPA's exercise of authority under the Clean Air Act by 42 U.S.C. 7610. That provision states: ''(a) Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.''

Section 612 of the Clean Air Act expressly recognizes that some substitutes for ODS may pose more risk to human health and the environment than others and expressly requires EPA to prohibit use of substitutes that pose more risk than other substitutes that are currently or potentially available. Thus, in evaluating whether a substitute should be found acceptable, we must compare the risks to human health and the environment of that substitute to the risks associated with other substitutes that are currently or potentially available.

Our long-standing interpretation is that worker safety is a factor we consider in determining whether a substitute poses significantly greater risk than other available substitutes. In the original SNAP rule, we promulgated the criteria we would review for purposes of determining whether a substitute posed more risk than other available substitutes. Specifically, 40 CFR 82.178(a) specifies the information we require as part of a SNAP application and 40 CFR 82.180(a)(7) identifies the criteria for review. Notably, we require submitters to provide information regarding the exposure data (40 CFR 82.178(a)(10)) and we identify ''occupational risks'' as one of the criteria for review (40 CFR 82.180(a)(7)(iv)). In the preamble of the original SNAP rule, we said that we would use any available OSHA PELs, EPA inhalation reference concentrations, or EPA cancer slope factor data for a substitute together with exposure data to explore possible concerns with toxicity (March 18, 1994; 59 FR 13066). We have reviewed substitutes based on existing OSHA PELs, where available, and, where not available, based on our own assessment of what level is safe for workers. (See e.g., March 18, 1994, 59 FR 13044; Sept. 5, 1996, 61 FR 47012; June 8, 1999, 64 FR 30410; June 19, 2000, 65 FR 37900; December 18, 2000, 65 FR 78977; March 22, 2002, 67 FR 13272; August 21, 2003, 68 FR 50533). In making our own assessment, we review any existing recommended exposure guidelines and available scientific studies and use EPA's risk assessment guidelines (e.g., U.S. EPA, 1994b).

In the case of EPA's evaluation of nPB, there is no final OSHA PEL for EPA to use in evaluating workplace exposure risks. There is a wide variability in the workplace exposure guidelines recommended by manufacturers of nPB-based products, ranging from 5 ppm to 100 ppm, thus providing no definitive value for evaluating the human health risks of workplace exposure. The ACGIH has recently established a TLV for nPB of 10 ppm; however, as discussed above in section IV.E, EPA has concerns about the scientific basis for this TLV. As provided in the original SNAP rule, in the absence of a definitive workplace exposure limit set by OSHA, we evaluated the available information to establish our own health-based criteria for evaluating nPB's human health risks to workers.

Comment: A commenter said that EPA's authority for the SNAP program is under section 615 of the Clean Air Act and that the SNAP program only has authority to take action based on effects on the stratosphere. Specifically, the commenter claims section 615 of the CAA limits EPA's authority under title VI to regulating for purposes of protecting the stratospheric ozone layer. Citing section 618, the commenter also contends that section 618 identified SNAP requirements as ''requirements for the control and abatement of air pollution'' and cites the CAA and EPA policy documents as identifying ambient air as air external to buildings. The commenter also notes that title VI was intended to implement the Montreal Protocol and that it replaced former Part B. The commenter cites legislative history from the enactment of Part B that indicated EPA's authority under Part B was not intended to pre-empt authority of other agencies to take action with respect to hazards in their areas of jurisdiction and that EPA's authority under Part B was only to fill regulatory gaps and not to supersede existing authority of other agencies. With respect to the legislative history of the 1990 Amendments, the commenter argues that there is no suggestion that ''EPA has authority to set workplace worker-exposure standards.'' The commenter also cites legislative history from the Toxic Substances Control Act in which Congress indicated EPA's authority under that statute does not extend to setting workplace standards.

Response: While many provisions in title VI address the regulation of substances that deplete the stratospheric ozone layer, section 612 which governs the SNAP program is broader. The purpose of Section 612 is to review substitutes for ODS and Section 612 of the Clean Air Act clearly requires EPA to consider both the environmental effects as well as *human health,* which includes both the health of the general population and workers. EPA believes there is no doubt that the statutory language requires EPA to consider effects beyond those on the stratospheric ozone layer. In addition, the legislative history makes clear that this language is to be interpreted broadly. Specifically, the report of House Debate on the Clean Air Act Amendments provides ''the Administrator shall base risk estimates on the total environmental risk (toxicity, flammability, atmospheric, etc.) that is perceived to exist, not just the risk as it relates to ozone depletion.'' House Debate on the Clean Air Act Amendments of 1990 Conference Report, S–Prt 103–38 at 1337. The legislative history cited by the commenter is not pertinent. The legislative history for Part B of Title I of the Act is not relevant because that section was repealed in 1990. Public Law 101–549, section 601. Nor is the legislative history for other statutes, such as TSCA, relevant for determining what authority Congress granted to EPA under the CAA.

The commenter incorrectly states that sections 615 and 618 of the CAA place limits on EPA's authority under section 612 of the Act. These provisions expand, rather than restrict, the Administrator's authority. Section 615 is a separate provision of the statute and provides general authority for the Administrator to regulate for purposes of addressing adverse effects to the stratosphere. This provision does not explicitly or implicitly purport to limit the Administrator's authority under other provisions of the Act. Rather, it is a general provision authorizing the Administrator to regulate for protecting against adverse effects to the stratospheric ozone layer.

With respect to section 618, we first note that the commenter appears to equate the stratospheric ozone layer with ''ambient air.'' In fact, they are two different things. Ambient air is defined as ''that portion of the atmosphere, external to buildings, to which the general public has access.'' 40 CFR 50.1(e). The stratospheric level generally extends from 10 to 50 kilometers above the earth and is not considered air to which the public has access. [See *http://www.epa.gov/ozone/defns.html*]. The definition of ''air pollutant'' under the CAA is defined in terms of substances emitted to the ''ambient air.'' The purpose of section 618 is to make clear that for purposes of sections 116 (retention of state authority) and 118 (control of pollution from federal facilities), the provisions in Title VI governing protection of the stratospheric ozone layer shall be treated the same as if they were for the purpose of controlling and abating ''air pollution'' (i.e., pollution to the ambient air). Again, this is not for the purpose of restricting the Administrator's authority under any provision of the Act. Rather, it is for the purpose of extending the protections of Title VI to programs that otherwise only address air pollution (i.e., ambient air, which does not include the stratospheric ozone layer).

Comment: A commenter stated that EPA's claim to authority conflicts with the Department of Labor's administrative ''whistleblower'' case law. These cases hold that a whistleblower action may proceed under the CAA only when the complaint concerned substances emitted to the ambient air. Claims regarding air quality within the workplace are brought under the whistleblower provisions of the OSH Act.

Response: The commenter overstates the import of the decisions issued by the Administrative Review Board. In each of the cited decisions, the Board examined the specific circumstances before it to determine which statutory whistleblower provision provided the basis for the claimed action. While making general pronouncements that the CAA regulates ambient air and OSHA regulates air within the workplace, none of these opinions specifically addressed the scope of EPA's authority under section 612, the SNAP provisions of the Act.

Comment: A commenter stated that even if ventilation or other measures could reduce exposures to below 25 ppm, there is nothing to ensure that companies will take such measures. This commenter also stated that he is aware of nPB formulators that have already announced they will not adhere to this voluntary standard. Three commenters, all representing local environmental regulators, stated that a recommendation that worker exposure be limited to 25 ppm will not carry the enforcement powers of an OSHA standard, and that this lack of control will encourage the use of nPB in applications beyond those envisioned by EPA. Another commenter asserted that the proposed exposure limits (both the AEL and the STEL) should be established as use conditions, citing Section 612 as the basis for EPA's authority to do so. This commenter stated that a precedent has already been set for EPA to accept an alternative chemical subject to use conditions—including that observance of workplace concentration limits—in the adhesives, aerosols, and solvent cleaning sectors (e.g., HCFC–225 ca/cb, HFC–4310mee, monochlorotoluenes, benzotrifluorides; 40 CFR part 82, subpart G, appendices A, B, and D).

Response: EPA agrees that a recommended AEL from EPA does not provide the same level of protection as an enforceable standard from OSHA. We also agree that EPA has the authority under section 612 to require use conditions in those circumstances where use of a potentially promising substitute would otherwise be unacceptable unless those use conditions are met and there are significant concerns about the ability of industry to meet a safe level for use. In the preamble to the original SNAP rule,

we recognized that there may be cases where OSHA has not regulated worker exposure to a substitute. We went on to say that ''EPA anticipates applying use conditions only in the rare instances where clear regulatory gaps exist, and where an unreasonable risk would exist in the absence of any conditions.'' For the solvent cleaning end use, we do not believe that there is an unreasonable risk in the absence of a use condition. Available exposure data show that roughly 88% of samples from nPB users in solvent cleaning met an exposure level of 25 ppm, 81% met an exposure level of 18 ppm, and 70% met an exposure level of 10 ppm (U.S. EPA, 2003). One nPB supplier provided evidence that on the few occasions when nPB concentrations from vapor degreasers were higher than the company's recommended AEL of 25 ppm, users were able to reduce exposure easily and inexpensively by changing work practices, such as reducing drafts near the cleaning equipment (Kassem, 2003). Therefore, we expect that users of nPB in the solvent cleaning sector following typical industry practices and using typical equipment for vapor degreasing will continue to use nPB at levels considered safe for workers. As noted above, this is the approach we indicated we would follow at the time of the original SNAP rule and we have taken this same approach for many other solvents where users are readily able to meet a workplace exposure limit that will protect human health and there is no enforceable OSHA PEL (e.g., HFC–365mfc and heptafluorocyclopentane at 65 FR 78977, ketones, alcohols, esters, and hydrocarbons at 59 FR 13044).

Comment: One commenter claims that section 6 of the Occupational Safety and Health Act requires OSHA to make certain legal findings before promulgating a standard and that therefore EPA has no authority to develop any AEL applicable to a workplace environment. Furthermore, since OSHA is the only agency that can make standards applicable in the workplace, any level developed by EPA is misleading. The same commenter said that EPA offers no reasoning as to why a different methodology for setting an AEL (from that of OSHA) is necessary or advisable. Therefore, this commenter believes that the Agency's process violates equal protection unless EPA is publishing a new standard for chemical review under SNAP.

Response: In this rulemaking, EPA has not developed an AEL that is applicable in any workplace. Rather, EPA looked at a range of possible AELs for purposes of determining whether nPB will pose significantly greater risk than other substitutes that are available in the same end use. The range of levels EPA used for its analysis is not binding. Moreover, as explained above in section V.B.2, EPA has concluded that for purposes of finding nPB acceptable in the solvent cleaning end use, it is not necessary to provide a non-binding recommended workplace exposure limit because these users in the solvent cleaning sector are regularly able to comply with even the lowest level EPA considered in performing its evaluation.

For standards covering hazardous chemicals in the workplace, the OSH Act requires OSHA to set standards that, to the extent feasible, ensure that workers do not suffer material impairments of health. Standards established by OSHA under their statute have not typically prohibited the use of the chemical in any particular application, but instead establish performance goals for the use and handling of hazardous chemicals that reduce such risks to the extent feasible. The available information on health effects of nPB on workers is not sufficiently well-characterized to develop a standard based on avoiding material impairments of health in workers. Most manufacturers and organizations that set workplace exposure limits such as ACGIH and the American Industrial Hygiene Association use an approach similar to EPA's and do not base exposure limits on avoiding material impairments of health in workers. Because of the need for large amounts of well-characterized data from the workplace on exposures and associated health effects to prepare an AEL to prevent material impairment, if EPA were to develop AELs for nPB and other chemicals based on the approach required by section 6 of the OSH Act, EPA would effectively be unable to assess the human health effects of ODS alternatives in time to assist industry in transitioning away from ODS. In order to provide for a more timely assessment of human health effects, as well as one that is consistent with federal guidelines of the National Academies of Science (NAS, 1983), we have considered exposure levels following EPA guidance (U.S. EPA, 1994b). Different substances have different toxicological effects and those effects must be considered based on the best scientific information and methodologies available. It is incorrect to claim that such reviews, which focus on the effects of different substances, resulted in disparate treatment of nPB.

VI. How can I use nPB as safely as possible?

Below are actions that will help nPB users minimize exposure levels:

All End Uses

- All users of nPB should wear appropriate personal protective equipment, including chemical goggles, flexible laminate protective gloves (e.g., Viton, Silvershield) and chemical-resistant clothing. Special care should be taken to avoid contact with the skin since nPB, like many halogenated solvents, can be absorbed through the skin. Refer to OSHA's standard for the selection and use of Personal Protective Equipment, 29 CFR 1910.132.
- Limit worker exposure to solvents to minimize any potential adverse health effects. Workers should avoid staying for long periods of time in areas near where they have been using the solvent. Where possible, shorten the period during each day when a worker is exposed. Where respiratory protection is necessary to limit worker exposures, respirators must be selected and used in accordance with OSHA's Respiratory Protection standard, 29 CFR 1910.134.
- Use less solvent, or use a different solvent, either alone or in a mixture with nPB.
- Follow all recommended safety precautions specified in the manufacturer's MSDS.
- Workers should receive safety training and education that includes potential health effects of exposure to nPB, covering information included on the appropriate MSDSs, as required by OSHA's Hazard Communication Standard (29 CFR 1910.1200).
- Request a confidential consultation from your State government on all aspects of occupational safety and health. You can contact the appropriate state agency that participates in OSHA's consultation program. These contacts are on OSHA's Web site at *http://www.osha.gov/oshdir/consult.html.* For further information on OSHA's confidential consultancy program, visit OSHA's web page at *http://www.osha.gov/html/consultation.html.*
- Use the employee exposure monitoring programs and product stewardship programs where offered by manufacturers and formulators of nPB-based products.
- If the manufacturer or formulator of your nPB-based product does not have an exposure monitoring program, we recommend that you start your own exposure monitoring program, and/or request a confidential consultation from your State government. A medical monitoring program should be

established for the early detection and prevention of acute and chronic effects of exposure to nPB. The workers' physician(s) should be given information about the adverse health effects of exposure to nPB and the workers' potential for exposure.

• For non-aerosol solvent cleaning, follow guidelines in the National Emissions Standards for Hazardous Air Pollutant (NESHAP) for halogenated solvents cleaning if you are using nPB. The equipment and procedural changes described in the halogenated solvents NESHAP can reduce emissions, reduce solvent losses and lower the cost of cleaning with organic solvents. For more information on the halogenated solvents NESHAP, visit *http://www.epa.gov/ttn/atw/eparules.html* and *http://www.epa.gov/ttn/atw/degrea/halopg.html.* We note that these steps are useful for reducing exposure to any industrial solvent, and not just nPB.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the document ''Analysis of Economic Impacts of nPB Rulemaking.'' A copy of the analysis is available in the docket for this action (Ref. EPA–HQ–OAR–2002–0064) and the analysis is briefly summarized here.

In our analysis, we assumed that capital costs are annualized over 15 years or less using a discount rate for determining net present value of 7.0%. The acceptability determination for solvents cleaning imposes no requirements and thus creates no additional cost to users.

EPA also considered potential costs end users could incur to meet acceptable exposure levels if they are not already achieving it. EPA found that those users using nPB-based solvents in a vapor degreaser would save money by reducing solvent losses, and that the savings would recover the costs of emissions controls (e.g., secondary cooling coils, automated lifts or hoists) within a year of installation. Based on evidence from solvent suppliers, EPA believes that some of those users would have chosen to use nPB in order to avoid meeting requirements of the national emission standard for halogenated solvents cleaning and that they would only become aware of the potential savings due to reduced solvent usage as a result of this proposal (Ultronix, 2001; Kassem, 2003; Tattersall, 2004). Based on available exposure data for each sector, we assumed that 81% of nPB users in the non-aerosol solvent cleaning sector already achieve exposure levels at the lowest level that we considered, i.e., 18 ppm (U.S. EPA, 2003). Of those nPB solvent users with exposure levels above that, we examined the cost associated with reducing emissions on average by 60%.

If all nPB users in solvent cleaning reduced exposures to 18 ppm, EPA estimates that users would save up to $2 million dollars per year, overall (U.S. EPA, 2007). The value will depend on the number of users that attempt to meet an acceptable exposure level which is already being achieved with existing equipment, the initial exposure level of cleaning solvent users, the price of nPB, and the amount of emission control equipment installed.

B. Paperwork Reduction Act

There are no new requirements for reporting or recordkeeping or information collection associated with this final rule. The final rule merely allows the use of substitutes for ozone-depleting substances, without requiring the collection, keeping, or reporting of information. OMB has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226 (EPA ICR No. 1596.06). This ICR included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP//Toxic Substance Control Act (TSCA) Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. However, the RFA also authorizes an agency to use alternate definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternate definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)—(5). In addition, to establish an alternate small business definition, agencies must consult with SBA's Office of Advocacy.

For purposes of assessing the impacts of EPA's June 2003 proposed rule on

small entities, EPA proposed to define ''small business'' as a small business with less than 500 employees, rather than use the individual SBA size standards for the numerous NAICS subsectors and codes to simplify the economic analysis. We solicited comments on the use of this alternate definition for this analysis in the June 2003 NPRM and received no public comments. EPA also consulted with the SBA's Office of Advocacy on the use of an alternate small business definition of 500 employees. The Office of Advocacy concurred with EPA's use of this alternate definition to analysis the economic impacts on small businesses from the use of n-propyl bromide as an acceptable substitute for use in metals, precision, and electronics cleaning, and in aerosols and adhesives end-uses. Therefore, EPA used this alternate definition for this final rule. We believe that no small governments or small organizations are affected by this rule. This approach slightly reduced the number of small businesses included in our analysis and slightly increased the percentage of small businesses for whom the analysis indicated the use of nPB in metals, precision, and electronics cleaning may have an economically significant impact. The number and types of small businesses that are subject to this rule have not changed significantly since the June 2003 proposal. EPA intends to use this alternate definition of ''small business'' for regulatory flexibility analyses under the RFA for any other rule related to the use of nPB as a chemical alternative to ozone-depleting substances (ODS) for the same end uses in the June 2003 NPRM (e.g., adhesives and aerosol solvents).

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA estimates that approximately 1470 users of nPB industrial cleaning solvents (e.g., cleaning with vapor degreasers) would be subject to this rule. This rule lists nPB as an acceptable substitute for ODS. This rule itself does not impose any binding requirements on users of nPB, and therefore will not have a significant economic impact on a substantial number of small entities. EPA did however analyze the potential economic impacts on small businesses that use nPB for cleaning solvents for metals cleaning, electronics cleaning, or precision cleaning. The details of EPA's analysis are described in the supporting materials for this rulemaking (U.S. EPA, 2007). Based on its analysis, EPA believes businesses using nPB-based cleaning solvents for metals cleaning, electronics cleaning, or precision cleaning would experience significant cost benefits by reducing spending on solvent.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule does not affect State, local, or tribal governments. This rule contains no enforceable requirements. The impact of users meeting the AEL range discussed in the preamble is from a savings of $2 million per year to a cost of $0 million per year. Therefore, the impact of this rule on the private sector is less than $100 million per year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the

distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

This final rule would not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The exposure limits and acceptability listings in this final rule apply to the workplace. These are areas where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturing of various metal, electronic, medical, and optical products cleaned with solvents containing nPB and products made with adhesives containing nPB. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 30, 2007.

VIII. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section I.B.1 at the beginning of this document. Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket # EPA–HQ–OAR–2002–0064. Some specific items are available only in hard copy in dockets A–2001–07 or A–92–42 (legacy docket numbers for SNAP nPB rule and for SNAP program and submissions). Numbers listed after the reference indicate the docket and item numbers.

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 15, 2007.

Stephen L. Johnson,

Administrator.

Appendix A: Summary of Decision

SOLVENT CLEANING ACCEPTABLE SUBSTITUTE

End uses	Substitute	Decision	Further information
Metals cleaning, electronics cleaning, and precision cleaning.	n-propyl bromide (nPB) as a substitute for CFC–113 and methyl chloroform.	Acceptable	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. EPA expects that all users of nPB would comply with any final Permissible Exposure Limit that the Occupational Safety and Health Administration issues in the future under 42 U.S.C. 7610(a). nPB, also known as 1-bromopropane, is Number 106–94–5 in the Chemical Abstracts Service (CAS) Registry.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2002–0064; FRL–8316–7]

RIN 2060–AK26

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide in Adhesives, Coatings, and Aerosols

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's (EPA or ''we'') Significant New Alternatives Policy (SNAP) program, this action proposes to list n-propyl bromide (nPB) as an unacceptable substitute for methyl chloroform, chlorofluorocarbon (CFC)–113, and hydrochlorofluorocarbon (HCFC)–141b when used in adhesives or in aerosol solvents because nPB in these end uses poses unacceptable risks to human health when compared with other substitutes that are available. In addition, EPA takes comment on alternate options that would find nPB acceptable subject to use conditions in adhesives or in aerosol solvents. This action also proposes to list nPB as acceptable, subject to use conditions, as a substitute for methyl chloroform, CFC–113, and hydrochlorofluorocarbon (HCFC)–141b in the coatings end use. This proposal supersedes EPA's proposal of June 3, 2003 on the acceptability of nPB as a substitute for ozone-depleting substances for aerosols and adhesives.

DATES: Comments must be received in writing by July 30, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before June 29, 2007. Any person interested in requesting a public hearing, must submit such request on or before June 29, 2007. If a public hearing is requested, a separate notice will be published announcing the date and time of the public hearing and the comment period will be extended until 30 days after the public hearing to allow rebuttal and supplementary information regarding any material presented at the public hearing. Inquiries regarding a public hearing should be directed to the contact person listed below.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0064, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: A-And-R-Docket@epa.gov.*
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington DC 20460, Attention Docket ID No. EPA–HQ–OAR–2002–0064. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2002–0064. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0064. 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 instructions on submitting comments, go to Section I.B. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9163; fax number (202) 343–2362 e-mail address: *sheppard.margaret@epa.gov.* Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

This proposed rule would regulate the use of n-propyl bromide as an aerosol solvent and as a carrier solvent in adhesives and coatings. Businesses in these end uses that currently might be using nPB, or might want to use it in the future, include:

- Businesses that manufacture electronics or computer equipment.
- Businesses that require a high level of cleanliness in removing oil, grease, or wax, such as for aerospace applications or for manufacture of optical equipment.
- Foam fabricators that glue pieces of polyurethane foam together or foam cushion manufacturers that glue fabric around a cushion.
- Furniture manufacturers that use adhesive to attach wood parts to floors, tables and counter tops.
- A company that manufactures ammunition for the U.S. Department of Defense. Regulated entities may include:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	331	Primary Metal Manufacturing.
Industry	332	Fabricated Metal Product Manufacturing.
Industry/Military	332992	Small Arms Ammunition Manufacturing.
Industry	333	Machinery Manufacturing.
Industry	334	Computer and Electronic Product Manufacturing.
Industry	335	Equipment Appliance, and Component Manufacturing.
Industry	336	Transportation Equipment Manufacturing.
Industry	337	Furniture and Related Product Manufacturing.
Industry	339	Miscellaneous Manufacturing.
Industry	326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

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

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** (FR) date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in this document.

8-hr—eight hour
ACGIH—American Conference of Governmental Industrial Hygienists
AEL—acceptable exposure limit

ASTM—American Society for Testing and Materials
BMD—benchmark dose
BMDL—benchmark dose lowerbound, the lower 95%-confidence level bound on the dose/exposure associated with the benchmark response
BSOC—Brominated Solvents Consortium
CAA—Clean Air Act
CAS Reg. No—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CEG—community exposure guideline
CERHR—Center for the Evaluation of Risks to Human Reproduction
CFC–113—the ozone-depleting chemical 1,1,2-trifluoro-1,2,2-trichloroethane, $C_2Cl_3F_3$, CAS Reg. No. 76–13–1
CFC—chlorofluorocarbon
cfm—cubic feet per minute
CFR—Code of Federal Regulations
CNS—central nervous system
DNA—deoxyribonucleic acid
EDSTAC—The Endocrine Disruptor Screening and Testing Advisory Committee
EPA—the United States Environmental Protection Agency
FR—Federal Register
GWP—global warming potential
HCFC–141b—the ozone-depleting chemical 1,1-dichloro-1-fluoroethane, CAS Reg. No. 1717–00–6
HCFC–225ca/cb—the commercial mixture of the two ozone-depleting chemicals 3,3-dichloro-1,1,1,2,2-pentafluoropropane, CAS Reg. No. 422–56–0 and 1,3-dichloro-1,1,2,2,3-pentafluoropropane, CAS Reg. No. 507–55–1
HCFC—hydrochlorofluorocarbon
HEC—human equivalent concentration
HFC–245fa—the chemical 1,1,3,3,3-pentafluoropropane, CAS Reg. No. 460–73–1
HFC–365mfc—the chemical 1,1,1,3,3-pentafluorobutane, CAS Reg. No. 405–58–6
HFC–4310mee—the chemical 1,1,1,2,3,4,4,5,5,5-decafluoropentane, CAS Reg. No. 138495–42–8
HFC—hydrofluorocarbon
HFE—hydrofluoroether
HHE—health hazard evaluation
ICF—ICF Consulting
ICR—Information Collection Request
iPB—isopropyl bromide, C_3H_7Br, CAS Reg. No. 75–26–3, an isomer of n-propyl bromide; also called 2-bromopropane or 2-BP
K_{oc}—organic carbon partition coefficient, for determining the tendency of a chemical to bind to organic carbon in soil
LC_{50}—the concentration at which 50% of test animals die
LOAEL—Lowest Observed Adverse Effect Level
Log K_{ow}—logarithm of the octanol-water partition coefficient, for determining the tendency of a chemical to accumulate in lipids or fats instead of remaining dissolved in water
mg/l—milligrams per liter
MSDS—Material Safety Data Sheet
NAICS—North American Industrial Classification System
NIOSH—National Institute for Occupational Safety and Health
NOAEL—No Observed Adverse Effect Level
NOEL—No Observed Effect Level
nPB—ln-propyl bromide, C_3H_7Br, CAS Reg. No. 106–94–5; also called 1-bromopropane or 1-BP
NPRM—Notice of Proposed Rulemaking
NTP—National Toxicology Program
NTTAA—National Technology Transfer and Advancement Act
ODP—ozone depletion potential
ODS—ozone-depleting substance
OEHHA—Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency
OMB—U.S. Office of Management and Budget
OSHA—the United States Occupational Safety and Health Administration
PCBTF—parachlorobenzotrifluoride, CAS Reg. No. 98–56–6
PEL—Permissible Exposure Limit ppm-parts per million
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
RfC—reference concentration
SIP—state implementation plan
SNAP—Significant New Alternatives Policy
TCA—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called methyl chloroform, MCF, or 1,1,1
TCE—the chemical 1,1,2-trichloroethene, CAS Reg. No. 79–01–6, C2Cl3H; also call trichloroethylene
TERA—Toxicological Excellence for Risk Assessment
TLV—Threshold Limit Value(tm)
TSCA—Toxic Substances Control Act
TWA—time-weighted average
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
VMSs—volatile methyl siloxanes
VOC—volatile organic compound

II. How does the Significant New Alternatives Policy (SNAP) program work?

A. What are the statutory requirements and authority for the SNAP program?

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances, referred to as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. We must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). EPA has 90 days to grant or deny a petition. Where the Agency grants the petition, we must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. How do the regulations for the SNAP program work?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances.

Anyone who plans to market or produce a substitute for an ozone-depleting substance (ODS) in one of the eight major industrial use sectors must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into

interstate commerce for significant new use as an alternative. This requirement applies to the person planning to introduce the substitute into interstate commerce, typically chemical manufacturers, but may also include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

The Agency has identified four possible decision categories for substitutes: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant sector end-use. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is illegal to replace an ODS with a substitute listed as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. We describe such substitutes as ''acceptable subject to use conditions.'' If you use these substitutes without meeting the associated use conditions, you use these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

For some substitutes, the Agency may permit a narrowed range of use within a sector. For example, we may limit the use of a substitute to certain end-uses or specific applications within an industry sector or may require a user to demonstrate that no other acceptable end uses are available for their specific application. We describe these substitutes as ''acceptable subject to narrowed use limits.'' If you use a substitute that is acceptable subject to narrowed use limits, but use it in applications and end-uses which are not consistent with the narrowed use limit, you are using these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

The Agency publishes its SNAP program decisions in the **Federal Register**. For those substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, we first publish these decisions as proposals to allow the public opportunity to comment, and we publish final decisions as final rulemakings. In contrast, we publish substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the rule implementing the SNAP program (59 FR 13044), we do not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information.'' These statements provide additional information on substitutes that we determine are unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements listed in this column are binding under other programs. The further information does not necessarily include all other legal obligations pertaining to the use of the substitute. However, we encourage users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require the affected industry to make significant changes in existing operating practices.

C. Where can I get additional information about the SNAP program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, look at EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/lists/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044), codified at Code of Federal Regulations at 40 CFR part 82, subpart G. You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at *http://www.epa.gov/ozone/snap/chron.html.*

III. What is EPA proposing today?

In this action, EPA proposes to list n-propyl bromide (nPB) as (1) unacceptable for use as a substitute for CFC–113,[1] methyl chloroform [2] and HCFC–141b [3] in the adhesive and aerosol solvent end uses; and (2) acceptable subject to use conditions (limited to coatings at facilities that, as of May 30, 2007, have provided EPA with information demonstrating their ability to maintain acceptable workplace exposures) as a substitute for methyl chloroform, CFC–113, and HCFC–141b in the coatings end use. This Notice of Proposed Rulemaking (NPRM) supersedes the NPRM published on June 3, 2003 (68 FR 33284) for aerosol solvents and adhesives.

A. What is n-propyl bromide?

n-propyl bromide (nPB), also called 1-bromopropane, is a non-flammable organic solvent with a strong odor. Its chemical formula is C_3H_7Br. Its identification number in Chemical Abstracts Service's registry (CAS Reg. No.) is 106–94–5. nPB is used to remove wax, oil, and grease from electronics, metal, and other materials. It also is used as a carrier solvent in adhesives. Some brand names of products using nPB are: Abzol®, EnSolv®, and Solvon® cleaners; Pow-R-Wash® NR Contact Cleaner, Superkleen Flux Remover 2311 and LPS NoFlash NU Electro Contact Cleaner aerosols; and Whisper Spray and Fire Retardant Soft Seam 6460 adhesives.

B. What industrial end uses are included in our proposed decision?

This proposal addresses the use of n-propyl bromide in the aerosol solvent end use of the aerosol sector and the adhesives and coatings end uses in the adhesives, coatings, and inks sector as discussed below. EPA is issuing a decision on the use of nPB in metals, electronics, and precision cleaning in a separate final rule. EPA has insufficient information for ruling on other end uses or sectors where nPB might be used (e.g., inks, foam blowing, fire suppression).

1. Aerosol Solvents

We understand that nPB is being used as an aerosol solvent in:

- Lubricants, coatings, or cleaning fluids for electrical or electronic equipment;

Lubricants, coatings, or cleaning fluids for aircraft maintenance; or

[1] CFC–113 is also referred to as Freon-113, or 1,1,2-trifluoro-1,2,2-trichloroethane. Its CAS Reg. No. is 76–13–1.

[2] Methyl chloroform is also referred to as 1,1,1-trichloroethane, TCA, MCF, or 1,1,1. Its CAS Reg. No. is 71–55–6.

[3] HCFC–141b is also referred to as 1,1-dichloro-1-fluoroethane. Its CAS Reg. No. is 1717–00–6.

• Spinnerrette lubricants and cleaning sprays used in the production of synthetic fibers.

2. Adhesives

Types of adhesives covered under the SNAP program are those that formerly used methyl chloroform, specifically, adhesives for laminates, flexible foam, hardwood floors, tire patches, and metal to rubber adhesives. Of these applications, nPB-based adhesives have been used most widely in spray adhesives used in manufacture of foam cushions, and to a lesser degree in laminate adhesives.

3. Coatings

The SNAP program regulates the use of carrier solvents in durable coatings, including paints, varnishes, and aerospace coatings (59 FR 13118). The SNAP program currently does not regulate carrier solvents in lubricant coatings, such as silicone coatings used on medical equipment (59 FR 13119). Methyl chloroform has been used as a carrier solvent in coatings, and to a much lesser degree, HCFC–141b also has been a carrier solvent. This rule responds to a submission from a facility that is substituting methyl chloroform with nPB as an ammunition coating (sealant).

C. What is the proposed text for EPA's listing decisions?

In the proposed regulatory text at the end of this document, you will find our proposed decisions for those end uses for which we have proposed nPB as unacceptable or acceptable subject to use conditions. The proposed conditions listed in the ''Use Conditions'' column would be enforceable while information contained in the ''Further Information'' column of those tables provides additional recommendations on the safe use of nPB. Our proposed decisions for each end use are summarized below in tables 2 through 4.

Proposed Listings

TABLE 2.—AEROSOLS PROPOSED UNACCEPTABLE SUBSTITUTES

End Use	Substitute	Decision	Further information
Aerosol solvents	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Unacceptable	EPA finds unacceptable risks to human health in this end use compared to other available alternatives. nPB, also known as 1-bromopropane, is Number 106–94–5 in the CAS Registry.

TABLE 3.—ADHESIVES, COATINGS, AND INKS PROPOSED UNACCEPTABLE SUBSTITUTES

Enduse	Substitute	Decision	Further information
Adhesives	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Unacceptable	EPA finds unacceptable risks to human health in this end use compared to other available alternatives. nPB, also known as 1-bromopropane, is Number 106–94–5 in the CAS Registry.

TABLE 4.—ADHESIVES, COATINGS, AND INKS SUBSTITUTES THAT ARE PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS

End Use	Substitute	Decision	Use conditions	Further information
Coatings	n-propyl bromide (nPB) as a substitute for methyl chloroform, CFC-113, and HCFC-141b.	Acceptable subject to use conditions.	Use is limited to coatings facilities that, as of May 30, 2007, have provided EPA information demonstrating their ability to maintain acceptable workplace exposures.	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. EPA expects that all users of nPB would comply with any final Permissible Exposure Limit that the Occupational Safety and Health Administration issues in the future under 42 U.S.C. 7610(a). nPB, also known as 1-bromopropane, is Number 106–94–5 in the CAS Registry.

Note: As of May 30, 2007, the Lake City Army Ammunition Plant is the only facility using nPB in coatings that has provided information to EPA that meets this condition.

D. What does an unacceptability determination on adhesives and aerosols mean?

In this action, EPA is proposing to find nPB unacceptable as a substitute for methyl chloroform, CFC–113, and HCFC–141b for use as a carrier solvent in adhesives and as an aerosol solvent. If this proposal were to become final, it would be illegal to use nPB or blends of nPB and other solvents in adhesives or in aerosol solvent formulations as a substitute for ozone-depleting substances.

E. What is the scope of the proposed determination for coatings?

We propose to list nPB as an acceptable substitute, subject to use conditions, for methyl chloroform, CFC–113, and HCFC–141b in coatings for facilities that, as of May 30, 2007, have

provided EPA information demonstrating their ability to maintain acceptable workplace exposures. EPA has received a petition to allow use of nPB for the ammunition coating application at Lake City Army Ammunition Plant. This is the only coatings application or facility for which EPA has exposure and usage data demonstrating an ability to maintain workplace exposure levels below even the minimum level of the range of exposures that EPA is considering to be potentially acceptable (i.e., 17 to 30 ppm) (see section IV.E for an evaluation of the health risks associated with nPB). If other facilities are interested in using nPB as a substitute for methyl chloroform, CFC–113, or HCFC–141b in their coatings application, or if a person wishes to market nPB for such use, then the interested party would need to make a submission under the SNAP program.

IV. What criteria did EPA consider in preparing this proposal?

In the original rule implementing the SNAP program (March 18, 1994; 59 FR 13044, at 40 CFR 82.180(a)(7)), the Agency identified the criteria we use in determining whether a substitute is acceptable or unacceptable as a replacement for class I or II compounds:

(i) Atmospheric effects and related health and environmental impacts; [e.g., ozone depletion potential]

(ii) General population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone;

(iii) Ecosystem risks [e.g., bioaccumulation, impacts on surface and groundwater];

(iv) Occupational risks;

(v) Consumer risks;

(vi) Flammability; and

(vii) Cost and availability of the substitute.

In this review, EPA considered all the criteria above. However, n-propyl bromide is used in industrial applications such as electronics cleaning or spray adhesives used in foam fabrication. In those consumer products made using nPB, such as a piece of furniture or a computer, the nPB would have evaporated long before a consumer would purchase the item. Therefore, we believe there is no consumer exposure risk to evaluate in the end uses we evaluated for this rule.

Section 612(c) of the Clean Air Act directs EPA to publish a list of replacement substances (''substitutes'') for class I and class II ozone depleting substances based on whether the Administrator determines they are safe (when compared with other currently or potentially available substitutes) for specific uses or are to be prohibited for specific uses. EPA must compare the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. In addition, EPA also considers whether the substitute for class I and class II ODSs ''reduces the overall risk to human health and the environment'' compared to the ODSs being replaced. Our evaluation is based on the end use; for example, we compared nPB as a carrier solvent in adhesives to other available or potentially available adhesive alternatives.

Although EPA does not judge the effectiveness of an alternative for purposes of determining whether it is acceptable, we consider effectiveness when determining whether alternatives that pose less risk are available in a particular application within an end use. There are a wide variety of acceptable alternatives listed for aerosol solvents, but not all may be appropriate for a specific application because of differences in materials compatibility, flammability, degree of cleanliness required, local environmental requirements, and other factors.

EPA evaluated each of the criteria separately and then considered overall risk to human health and the environment in comparison to other available or potentially available alternatives. We concluded that overall, environmental risks were not sufficient to find nPB unacceptable in any of the evaluated end uses. However, the overall risks to human health, and particularly the risks to worker health, are sufficiently high in the adhesive and aerosol solvent end uses to warrant our proposal to find nPB unacceptable.

A. Availability of Alternatives to Ozone-Depleting Substances

Other alternatives are available in each end use considered in this proposal. Examples of other available alternatives for aerosol solvents that have already been found acceptable or acceptable subject to use conditions under the SNAP program include water-based formulations, alcohols, ketones, esters, ethers, terpenes, HCFC–141b, HCFC–225ca/cb, hydrofluoroethers (HFEs), hydrofluorocarbon (HFC)–4310mee, HFC–365mfc, HFC–245fa, hydrocarbons, trans-1,2-dichloroethylene, methylene chloride, trichloroethylene [4] (TCE), perchloroethylene [5], and parachlorobenzotrifluoride (PCBTF). Of these, hydrocarbons, alcohols, blends of trans-1,2-dichloroethylene and HFEs or HFCs, and HCFC–225ca/cb are most likely to be used in the same applications as nPB. nPB is already commercially available in aerosols. Its use is primarily for electrical contact cleaning, with some use for benchtop cleaning applications (Williams, 2005).

Many alternatives are also available for use in adhesives, coatings, and inks: Water-based formulations, high solid formulations, alcohols, ketones, esters, ethers, terpenes, HFEs, hydrocarbons, trans-1,2-dichloroethylene, chlorinated solvents, PCBTF, and a number of alternative technologies (e.g., powder, hot melt, thermoplastic plasma spray, radiation-cured, moisture-cured, chemical-cured, and reactive liquid). Of these, the alternative adhesives most likely to be used in the same applications as nPB are water-based formulations, adhesives with methylene chloride, and flammable adhesives with acetone (IRTA, 2000). nPB is already used in adhesives, and particularly in foam fabrication and in constructing seating for aircraft (IRTA, 2000; Seilheimer, 2001).

To our knowledge, nPB is potentially available as a carrier solvent in coatings, but has not yet been commercialized, except for use by one facility, the Lake City Army Ammunition Plant. The Lake City Army Ammunition Plant evaluated twenty-nine carrier solvent alternatives to methyl chloroform and determined that nPB is the only satisfactory alternative for their application given the current process at that facility (Harper, 2005).

B. Impacts on the Atmosphere and Local Air Quality

As discussed in the June, 2003 proposal, nPB emissions from the continental United States are estimated to have an ozone depletion potential (ODP) of approximately 0.013–0.018, (Wuebbles, 2002), lower than that of the ozone depletion potential of the substances that nPB would replace—CFC–113 (ODP = 1.0), and methyl chloroform and HCFC–141b (ODPs = 0.12) (WMO, 2002). Some other acceptable alternatives for these ODSs also have low ODPs. For example, HCFC–225ca/cb has an ODP of 0.02–0.03 (WMO, 2002) and is acceptable as an aerosol solvent. There are other acceptable solvents for aerosols, adhesives, and coatings that essentially have no ODP—aqueous cleaners, HFEs, HFC–4310mee, HFC–365mfc, HFC–245fa, hydrocarbons, volatile methyl siloxanes (VMSs), methylene chloride, TCE, perchloroethylene, and PCBTF.

[4] Also called trichlorethene or TCE, C_2Cl_3H, CAS Reg. No. 79–01–6.

[5] Also called PERC, tetrachloroethylene, or tetrachloroethene, C_2Cl_4, CAS Reg. No. 127–18–4.

Based on this information, we do not believe the use of nPB within the U.S., and within the end-uses reviewed in this rulemaking, poses a significantly greater risk to the ozone layer than other available substitutes.

Comments on the June 2003 NPRM expressed concern that other countries, particularly those in equatorial regions, might assume that nPB does not pose a danger to the stratospheric ozone layer if the U.S. EPA's SNAP program finds nPB acceptable (Linnell, 2003; Steminiski, 2003). Because the ODP for nPB is higher when used in the tropics,[6] we recognize the concerns raised by these commenters. However, EPA is regulating use in the U.S. and cannot dictate actions taken by other countries. We believe the more appropriate forum to address this concern is through the Parties to the Montreal Protocol. At the most recent Meeting of the Parties, the Parties made the following decision with regard to n-propyl bromide, in order to ''allow Parties to consider further steps regarding n-propyl bromide, in the light of available alternatives'' (Decision XVIII/11):

1. To request the Scientific Assessment Panel to update existing information on the ozone depletion potential of n-propyl bromide, including ozone depleting potential depending on the location of the emissions and the season in the hemisphere at that location;

2. To request the Technology and Economic Assessment Panel to continue its assessment of global emissions of n-propyl bromide, * * * paying particular attention to:

(a) Obtaining more complete data on production and uses of n-propyl bromide as well as emissions of n-propyl bromide from those sources;

(b) Providing further information on the technological and economical availability of alternatives for the different use categories of n-propyl bromide and information on the toxicity of and regulations on the substitutes for n-propyl bromide;

(c) Presenting information on the ozone depletion potential of the substances for which n-propyl bromide is used as a replacement;

3. To request that the Technology and Economic Assessment Panel prepare a report on the assessment referred to in paragraph 1 in time for the twenty-seventh meeting of the Open-ended Working Group for the consideration of the Nineteenth Meeting of the Parties. (MOP 18, 2006)

The global warming potential (GWP) index is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. Earlier data found a direct 100-year integrated GWP (100yr GWP) for nPB of 0.31 (Atmospheric and Environmental Research, Inc., 1995). More recent analysis that considers both the direct and the indirect GWP of nPB found a 100-yr GWP of 1.57 (ICF, 2003a; ICF, 2006a). In either case, the GWP for nPB is comparable to or below that of previously approved substitutes in these end uses.

Use of nPB may be controlled as a volatile organic compound (VOC) under state implementation plans (SIPs) developed to attain the National Ambient Air Quality Standards for ground-level ozone, which is a respiratory irritant. Users located in ozone nonattainment areas may need to consider using a substitute for cleaning that is not a VOC or if they choose to use a substitute that is a VOC, they may need to control emissions in accordance with the SIP. Companies have petitioned EPA, requesting that we exempt nPB from regulation as a VOC. However, unless and until EPA issues a final rulemaking exempting a compound from the definition of VOC and states change their SIPs to exclude such a compound from regulation, that compound is still regulated as a VOC. Other acceptable ODS-substitute solvents that are VOCs for state air quality planning purposes include most oxygenated solvents such as alcohols, ketones, esters, and ethers; hydrocarbons and terpenes; trichloroethylene; trans-1,2-dichloroethylene; monochlorotoluenes; and benzotrifluoride. Some VOC-exempt solvents that are acceptable ODS substitutes include HFC–245fa, HCFC–225ca/cb, HFC–365mfc and HFC–4310mee for aerosol solvents, and methylene chloride, perchloroethylene, HFE–7100, HFE–7200, PCBTF, acetone, and methyl acetate for aerosol solvents, adhesives, and coatings.

C. Ecosystem and Other Environmental Impacts

EPA considered the possible impacts of nPB if it were to pollute soil or water as a waste and compared these impacts to screening criteria developed by the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC, 1998) (see Table 5). Available data on the organic carbon partition coefficient (K_{oc}), the breakdown processes in water and hydrolysis half-life, and the volatilization half-life indicate that nPB is less persistent in the environment than many solvents and would be of low to moderate concern for movement in soil. Based on the LC_{50}, the acute concentration at which 50% of tested animals die, nPB's toxicity to aquatic life is moderate, being less than that for some acceptable cleaners (for example, trichloroethylene, hexane, d-limonene, and possibly some aqueous cleaners) and greater than that for some others (methylene chloride, acetone, isopropyl alcohol, and some other aqueous cleaners). The LC_{50} for nPB is 67 milligrams per liter (mg/l), which is greater and thus less toxic than an LC_{50} of 10 mg/l, one of EPA's criteria for listing under the Toxics Release Inventory (US EPA, 1992; ICF, 2004a). Based on its relatively low bioconcentration factor and log K_{ow} value (logarithm of the octanol-water partition coefficient), nPB is not prone to bioaccumulation. Table 5 summarizes information on environmental impacts of nPB; trans-1,2-dichloroethylene, a commonly-used solvent in blends for aerosol solvents, precision cleaning, and electronics cleaning; acetone, a commonly-used carrier solvent in adhesives; trichloroethylene, a solvent used for metals, electronics, and precision cleaning that could potentially be used in aerosol or adhesive end-uses; and methyl chloroform, an ODS that nPB would replace.

[6] nPB emissions in the tropics have an ODP of 0.071 to 0.100; the portions of the U.S. outside the continental U.S., such as Alaska, Hawaii, Guam, and the U.S. Virgin Islands, contain less than 1 percent of the U.S.'s businesses in industries that could use nPB. Thus, their potential impact on the ozone layer must be significantly less than that of the already low impact from nPB emissions in the continental U.S. (U.S. Economic Census, 2002a through f).

TABLE 5.—ECOSYSTEM AND OTHER ENVIRONMENTAL PROPERTIES OF nPB AND OTHER SOLVENTS

Property	Description of environmental property	Value for nPB	Value for trans-1,2-dichloro-ethylene	Value for acetone	Value for trichloroethylene	Value for methyl chloroform
K_{oc}, organic-carbon partition coefficient.	Degree to which a substance tends to stick to soil or move in soil. Lower values (< 300)* indicate great soil mobility; values of 300 to 500 indicate moderate mobility in soil.	330 (Source: ICF, 2004a).	32 to 49 (Source: ATSDR, 1996).	5.4 (Source: ATSDR, 1994).	106 to 460 (Source: ATSDR, 1997).	152 (Source: U.S. EPA, 1994a).
Break down in water.	Mechanism and speed with which a compound breaks down in the environment. (Hydrolysis half-life values > 25 weeks* are of concern.).	Hydrolysis is significant. Hydrolysis half-life of 26 days (Source: ICF, 2004a).	Photolytic decomposition, dechlorination and biodegradation are significant; hydrolysis not significant (Source: ATSDR, 1996).	Biodegradation is most significant form of breakdown (Source: ATSDR, 1994).	Volatilization and biodegradation most significant, with hydrolysis relatively insignificant. Hydrolysis half-life of 10.7 to 30 months (Source: ATSDR, 1997).	Volatilization most significant; biodegradation and hydrolysis also occur (Source: ATSDR, 2004).
Volatilization half-life from surface waters.	Tendency to volatilize and pass from water into the air.	3.4 hours-4.4 days (Source: ICF, 2004a).	3 to 6.2 hours (Source: ATSDR, 1996).	7.8 to 18 hours (Source: ATSDR, 1994).	3.4 hours to 18 days (Source: ATSDR, 1997).	Hours to weeks (Source: U.S. EPA, 1994a).
LC_{50} (96 hours) for fathead minnows.	Concentration at which 50% of animals die from toxicity after exposure for 4 days.	67 mg/L (Source: Geiger, 1988).	108 mg/L (Source: U.S. EPA, 1980).	7280 to 8120 mg/L (Source: Fisher Scientific, 2001).	40.7 to 66.8 mg/L (Source: NPS, 1997).	52.8 to 105 mg/L (Source: U.S. EPA, 1994a).
log K_{ow}	Logarithm of the octanol/water partition coefficient, a measure of tendency to accumulate in fat. Log K_{ow} values >3;* indicate high tendency to accumulate.	2.10 (Source: ICF, 2004a).	−0.48 (Source: LaGrega *et al.*, 2001, p. 1119).	−0.24 (Source: LaGrega *et al.*, 2001, p. 1117).	2.38 (Source: LaGrega *et al.*, 2001, p. 1127).	2.50 (Source: LaGrega *et al.*, 2001, p. 1127).
Bioconcentration factor.	High factors (>1000)* indicate strong tendency for fish to absorb the chemical from water into body tissues.	23 (Source: HSDB, 2004).	5 to 23 (Source: ATSDR, 1996).	<1 (Source: ATSDR, 1994).	10 to 100 (Source: ATSDR, 1997).	<9 (Source: U.S. EPA, 1994a).

*Criteria from EDSTAC, 1998.

nPB is not currently regulated as a hazardous air pollutant and is not listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). nPB is not required to be reported as part of the Toxic Release Inventory under Title III of the Superfund Amendments and Reauthorization Act. Despite this, large amounts of nPB might be harmful if disposed of in water. We recommend that users dispose of nPB as they would dispose of any spent halogenated solvent (F001 waste under RCRA). Users should not dump nPB into water, and should dispose of it by incineration. We conclude that nPB does not pose a significantly greater risk to the environment than other available alternatives, and that the use of nPB within the U.S. should not be prohibited under the SNAP program on the basis of its environmental impacts.

D. Flammability and Fire Safety

A number of commenters on the June 2003 proposal provided additional information on the flammability of nPB using standard test methods for determining flash point, such as the American Society for Testing and Materials (ASTM) D 92 open cup, ASTM D56 Tag closed cup, and ASTM D93 Pensky-Martens closed cup methods (BSOC, 2000; Miller, 2003; Morford, 2003a, 2003b, and 2003c;

Shubkin, 2003; Weiss Cohen, 2003). We agree with the commenters that by these standard test methods, nPB displayed no flash point. Thus under standard test conditions, nPB is not flammable, and it should not be flammable under normal use conditions. With its low potential for flammability, nPB is comparable to chlorinated solvents, HCFCs, HFEs, HFC–245fa, HFC–4310mee, and aqueous cleaners, and is less flammable than many acceptable substitutes, such as ketones, alcohols, terpenes, and hydrocarbons. nPB exhibits lower and upper flammability limits of approximately 3% to 8% (BSOC, 2000). A number of other solvents that are typically considered to be non-flammable also have flammability limits (for example, methylene chloride, HCFC–141b, and methyl chloroform). If the concentration of vapor of such a solvent falls between the upper and lower flammability limits, it could catch fire in presence of a flame. Such a situation is unusual, but users should take appropriate precautions in cases where the concentration of vapor could fall between the flammability limits.

E. Health Impacts and Exposure

In evaluating potential human health impacts of nPB used as a substitute for ozone-depleting substances, EPA considered impacts on both exposed workers and on the general population. Using the same approach finalized in the original SNAP rulemaking, EPA evaluated the available toxicity data using EPA guidelines to develop health-based criteria to characterize human health risks (US EPA, 1994b. Inhalation Reference Concentration Guidelines; U.S. EPA, 1991. Guidelines for Developmental Toxicity Risk Assessment; U.S. EPA, 1995a. Benchmark Dose guidelines; U.S. EPA, 1996. Guidelines for Reproductive Toxicity Risk Assessment).

To assess human health risks, EPA followed the four basic steps of risk assessment outlined by the National Academy of Sciences: hazard identification, dose-response relationship, exposure assessment, and risk characterization (NAS, 1983). First, EPA examined available studies on nPB's effects. Second, EPA considered the acceptable exposure levels for evaluating worker exposure and a community exposure guideline (CEG) for evaluating exposure to the general population based upon inhalation exposure. Third, EPA compared the acceptable exposure levels and CEG to available exposure data and projections of exposure levels to assess exposure, including new exposure data available since publication of the June 2003 NPRM. Finally, EPA decided whether there was sufficient evidence indicating that nPB could be used as safely as other alternatives available in a particular end use.

Authority To Set an Acceptable Exposure Limit

Two commenters on the June 2003 NPRM said that EPA has no jurisdiction to develop any acceptable exposure limit (AEL) designed to be applicable to a workplace environment and that only the Occupational Safety and Health Administration (OSHA) has that authority (Stelljes, 2003; Morford, 2003d). In contrast, another commenter said that EPA has the authority to set an AEL for nPB under section 612 of the Clean Air Act, has done so in the past for other chemicals (e.g., HFC–4310mee, HCFC–225ca/cb), and should require the AEL as a use condition (Risotto, 2003).

EPA believes it has the authority to calculate exposure limits for the workplace under section 612. Section 612(c) specifically states that

> The Administrator shall issue regulations: providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—
>
> (1) reduces the overall risk to human health and the environment; and
>
> (2) is currently or potentially available.

Thus, we must compare the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available, as required by the Clean Air Act. In order to compare risks to human health, EPA performs quantitative risk assessments on different chemicals comparing exposure data and exposure limits, following the process described above by the National Academies of Science (NAS, 1983) and as described in the preamble to the original final SNAP rule (March 18, 1994; 59 FR 13066). Because most humans who are exposed to nPB are exposed in the workplace, the appropriate exposure data and exposure limits to protect human health must include workplace exposure data and acceptable exposure limits for the workplace. Because there is wide disparity in acceptable exposure limits for nPB developed by industry, ranging from 5 ppm to 100 ppm (Albemarle, 2003; Chemtura, 2006; Docket A–2001–07, item II–D–19; Enviro Tech International, 2006; Farr, 2003; Great Lakes Chemical Company, 2001), and because there is not a Permissible Exposure Limit for nPB set by the Occupational Safety and Health Administration, EPA believes it is appropriate to independently evaluate the human health risks associated with use of nPB in the workplace. Similarly, EPA has developed a community exposure guideline to assess the human health effects of nPB exposure to the general public.

Skin Notation

Several commenters on the June 2003 proposal stated that a skin notation for nPB is appropriate, while another commenter agreed with EPA's proposal that no skin notation was necessary (Smith, 2003; HESIS, 2003; Werner, 2003, Weiss Cohen, 2003). Rat studies indicate that dermal exposure to nPB results in neither appreciable absorption through the skin (RTI, 2005) nor systemic toxicity (Elf Atochem, 1995). Unlike methyl chloride and dichlorvos, which are absorbed through the skin and could contribute to systemic toxicity (ACGIH, 1991), EPA is not proposing to include a skin notation for nPB in the information provided to users associated with this rulemaking because of the relatively low level of absorption. The American Conference of Governmental Industrial Hygienists (ACGIH) provides no skin notation in its documentation for threshold limit values (TLVs) for several solvents, including nPB (ACGIH, 2005), methylene chloride, and perchloroethylene, and there is no evidence that absorption through the skin is greater for nPB than for the other halogenated compounds. Further, including a statement giving advice about how to reduce skin exposure in the ''Further Information'' column of listings is likely to be more informative to workers than a skin notation.

Given the possibility that some nPB can be absorbed through the skin in humans, and that the solvent can irritate the skin, EPA encourages users to wear protective clothing and flexible laminate gloves when using nPB and encourages vendors to include such precautions in their Material Safety Data Sheets (MSDSs). EPA requests comment on whether it would be useful, in lieu of a skin notation to add the following statement in the ''further information'' column of each end use where we find nPB acceptable with restrictions: ''EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing, when using nPB.''

EPA also considered the potential health effects of contamination of nPB formulations with isopropyl bromide

(iPB).[7] In the June 2003 proposed rule, we proposed as a use condition that nPB formulations contain no more than 0.05% iPB by weight. One commenter opposed the proposed use condition, stating that it places an undue legal burden on end users, rather than the manufacturers of raw materials, that it would not benefit worker safety, and that the nPB industry has worked to reduce iPB content below 0.05% (Morford, 2003e). We agree that industry has met this contamination limit for several years without regulation. Furthermore, EPA agrees that if users are exposed to nPB concentrations no higher than the highest potentially acceptable concentration (30 ppm), a worker's exposure to iPB will be sufficiently low to avoid adverse effects. Therefore, this proposed rule does not include a use condition limiting iPB content in nPB formulations.

1. Workplace Risks

In the June 2003 NPRM, EPA proposed that an exposure limit of 25 ppm would be protective of a range of effects observed in animal and human studies, including reproductive and developmental toxicity, neurotoxicity, and hepatotoxicity. Reduction of sperm motility in rats, noted across multiple studies at relatively low exposures, was determined to be the most sensitive effect. The Agency derived an exposure limit of 18 ppm from a dose response relationship in male rat offspring (''F1 generation'') whose parents were exposed to nPB from prior to mating through birth and weaning of the litters (WIL, 2001). We then proposed to adjust this value upwards to 25 ppm based on principles of risk management, consistent with one of the original ''Guiding Principles'' of the SNAP program (59 FR 13046, March 18, 1994). As we discussed in the June 2003 NPRM, EPA noted that adhesives users should be able to achieve an AEL of 25 ppm and that 25 ppm was between the level based on the most sensitive endpoint (sperm motility in the F1 offspring generation at 18 ppm) and the second most sensitive endpoint (sperm motility in the F0 parental generation at 30 ppm). Following SNAP program principles, we noted that ''a slight adjustment of the AEL may be warranted after applying judgment based on the available data and after considering alternative derivations'' (69 FR 33295). Because the animals were exposed to nPB for some time periods that would not occur during actual occupational exposure, we stated further that ''18 ppm is a reasonable but possibly conservative starting point, and that exposure to 25 ppm would not pose substantially greater risks, while still falling below an upper bound on the occupation[al] exposure limit.''

Since the 2003 proposal, the Agency has reviewed both information available at the time of the 2003 NPRM related to the health risks associated with nPB use, as well as more recent case studies of nPB exposures and effects in the workplace, newly published toxicological studies, comments to the June 2003 NPRM, including new risk assessments on nPB, and a new threshold limit value (TLV) issued by ACGIH.

OSHA has not developed a permissible exposure limit (PEL) for nPB that EPA could use to evaluate toxicity risks from workplace exposure. The ACGIH, an independent organization with expertise in industrial hygiene and toxicology, has developed a final workplace exposure limit of 10 ppm (ACGIH, 2005); however, as discussed below, EPA has concerns about the documentation and basis of ACGIH's derivation.

The Agency reconsidered which exposure levels are likely to protect against various health effects, based on review of all available information. We summarize benchmark dose data for a number of endpoints found in these analyses in Table 6 below. We examined these data to assess the acceptability of nPB use in the aerosol solvent, adhesive and coatings end uses reviewed in this proposed rule. These data indicate that, once uncertainty factors are applied consistent with EPA guidelines, the lowest levels for acceptable exposures would be derived for reproductive effects.[8] The data indicate that levels sufficient to protect against male reproductive effects (e.g., reduced sperm motility) would be in a range from 18 to 30 ppm,[9] in the range of 17 to 22 ppm to protect against female reproductive effects (e.g., number and length of estrous cycles), and at approximately 20 ppm for effects related to reproductive success (live litter size).

TABLE 6.—SUMMARY OF ENDPOINTS USING BENCHMARK RESPONSE MODELING

Endpoint [a]	Study	Benchmark dose lowerbound (BMDL) [b] (ppm)	Human equivalent concentration (HEC) [c] (ppm)
Liver Effects [d]			
Liver vacuolation in males (F_1 offspring generation)	WIL, 2001 as analyzed in ICF, 2002	110	116
Liver vacuolation in males (F_0 parent generation)	WIL, 2001 as analyzed in ICF, 2002	143	150
Liver vacuolation	ClinTrials, 1997b as analyzed in ICF, 2002 and Stelljes & Wood, 2004.	226	170
Reproductive Effects—Male			
Sperm motility (F_1 offspring generation)	WIL, 2001 as analyzed in ICF, 2002	169	177
	WIL, 2001 as analyzed in Stelljes & Wood, 2004	156	164
Sperm motility (F_0 parent generation)	WIL, 2001 as analyzed in ICF, 2002	282	296
	WIL, 2001 as analyzed in Stelljes & Wood, 2004	263	276
Prostate weight (F_0 parent generation)	WIL, 2001 as analyzed in TERA, 2004	190	200

[7] iPB is also referred to as 2-bromopropane, 2-propyl bromide, or 2–BP. Its CAS registry number is 75–26–3.

[8] By EPA guidelines, we would apply an uncertainty factor of −10, or approximately 3, for differences between species for all health effects. We would also apply an uncertainty factor of √10 (3) for variability within the working population for reproductive and developmental effects, because, among other reasons, these conditions would not necessarily screen out an individual from being able to work, unlike for liver or nervous system effects. Therefore, for reproductive and developmental effects, we use a composite uncertainty factor of 10. See further discussion of uncertainty factors in section V.C. below.

[9] Based on WIL, 2001, as analyzed in ICF, 2002. The equivalent values based upon Stelljes and Wood's (2004) analysis of WIL, 2001 would be slightly lower, from 16 to 28 ppm.

TABLE 6.—SUMMARY OF ENDPOINTS USING BENCHMARK RESPONSE MODELING—Continued

Endpoint [a]	Study	Benchmark dose lowerbound (BMDL) [b] (ppm)	Human equivalent concentration (HEC) [c] (ppm)
Sperm count	Ichihara *et al.*, 2000b as analyzed in Stelljes & Wood, 2004.	232	325
Sperm deformities (F_0 parent generation)	WIL, 2001 as analyzed in Stelljes & Wood, 2004	296	311
Reproductive Effects—Female			
Number of estrus cycles during a 3 week period (F_0 parent generation).	WIL, 2001 as analyzed in ICF, 2006	162	170
	WIL, 2001 as analyzed in ICF, 2006	208	218
Estrous cycle length (F_1 offspring generation) [d]	WIL, 2001 as analyzed in TERA, 2004	400	420
Estrous cycle length (F_0 parent generation) [e]	WIL, 2001 as analyzed in TERA, 2004	210	220
No estrous cycle incidence (F_1 offspring generation)	WIL, 2001 as analyzed in TERA, 2004	180	189
No estrous cycle incidence (F_0 parent generation)	WIL, 2001 as analyzed in TERA, 2004	480	504
Reproductive Effects—Reproductive Success			
Decreased live litter size (F_1 offspring generation)	WIL, 2001 as analyzed in TERA, 2004	190	200
Decreased live litter size (F_2 offspring generation)	WIL, 2001 as analyzed in TERA, 2004	170	179
Pup weight gain, post-natal days 21 to 28 (F_1 offspring generation).	WIL, 2001 as analyzed in TERA, 2004	180	189
Developmental Effects			
Fetal body weight	WIL, 2001 as analyzed in TERA, 2004	310	326
Fetal body weight	WIL, 2001 as analyzed in CERHR, 2002a	305	320
Nervous System Effects			
Hindlimb strength	Ichihara *et al*, 2000a as analyzed in Stelljes and Wood, 2004.	214	300

[a] Unless explicitly stated, data are from a parental generation. Of the studies analyzed, only the WIL, 2001 study has multiple generations to be analyzed.
[b] The benchmark response value represents a specified level of excess risk above a control response.
[c] When considering workplace exposures, the human equivalent concentration is the BMDL, adjusted to apply to a 40-hour work week in which workers are exposed for 8 hours a day for five days per week. Animals in the WIL, 2001 study were exposed for 6 hours a day, 7 days a week. Animals in the Ichihara, 2000a and 2000b studies were exposed for 8 hours a day, 7 days a week. Animals in the ClinTrials, 1997b study were exposed for 6 hours a day, 5 days a week.
[d] After applying an uncertainty factor of 3 for animal to human extrapolation, acceptable levels of exposure to protect against liver effects would be in the range of 39 to 57 ppm.
[e] Omits data from those animals that have stopped estrous cycling altogether (TERA, 2004).

2. General Population Risks

EPA used a community exposure guideline of 1 ppm to assess potential risks to the general population living near a facility using nPB (see section V.E below). Of the end uses covered in this rule, use of nPB-based adhesives would result in the highest exposure levels, and so, we first examined general population exposure from adhesives. ICF Consulting modeled inhalation exposure to nPB to people living near a plant using nPB-based adhesives in several scenarios using the Agency's SCREEN3 model (US EPA, 1995b). Based on this modeling, EPA found that the exposure to individuals in the general population was below the community exposure guideline. The analysis indicates that nPB is no greater a hazard to the general population than other acceptable solvents under the SNAP program. For further discussion, see the risk screen for nPB (ICF, 2006a).

Representatives from a state environmental agency and from a potential user of nPB have asked EPA whether we had developed a reference concentration (RfC). We clarify that the community exposure guideline is a value developed by the SNAP program for our risk assessment of nPB following EPA's RfC Guidelines. However, it is not a formal RfC developed by EPA's National Center for Environmental Assessment and is not in IRIS. At this time, EPA does not have plans to issue an official RfC for nPB.

V. How did EPA assess impacts on human health?

A. Newly Available Exposure Data

Since publication of the June 2003 NPRM, EPA has received additional information on exposure levels in each end use discussed in this proposal.

In the adhesives end use, we considered new exposure modeling based on information from site visits to facilities using spray adhesives (ICF, 2006a). These data predicted that:

- At average rates of ventilation and adhesive application, average workplace exposures would be approximately 60 ppm.
- Average adhesive application rates and poor ventilation rates resulted in average exposures of approximately 250 ppm.
- High (90th percentile) adhesive application rates and average ventilation rates resulted in average exposures of approximately 600 ppm.
- In the worst case scenario with high adhesive application rates and poor ventilation, average workplace exposures would be as high as 2530 ppm.

We compared the modeled data in the four exposure scenarios to measured exposure data in three health hazard evaluations by the National Institute for Occupational Safety and Health (NIOSH) (NIOSH 2002a, 2002b, 2003a).

Our understanding is that North Carolina OSHA received complaints from workers and requested that NIOSH evaluate health hazards at these three facilities. NIOSH found average exposure levels of 68 ppm, 116 ppm, 127 ppm, and 195 ppm for sprayers actively using the adhesive prior to installation of state-of-the-art ventilation systems (NIOSH 2002a, 2002b, 2003a). The plant with an average exposure level of 68 ppm for sprayers (9 samples) had an average exposure level comparable to the average concentration of 60 ppm in the modeling scenario with average adhesive rates and average ventilation levels. The other plants with average exposure levels of 116 to 127 ppm (20 samples), and of 195 ppm (36 samples) for sprayers had exposure levels between the average modeled exposure for a facility with average adhesive application rates and average ventilation (60 ppm) and the average modeled exposure for a facility with average adhesive application rates and poor ventilation (250 ppm). Based on this comparison, EPA believes the modeled exposure levels are a reasonable predictor of actual exposure based on current industry practice in the adhesive end use.

In the aerosol solvent end use, we received a study on workplace exposure levels of nPB-based aerosols from a commenter (Linnell, 2003). This study was performed to simulate typical exposure levels in a number of situations where nPB might be used in the workplace while using different types of ventilation equipment, rather than using data from current industry users of nPB-based aerosols in their actual manufacturing or maintenance processes. As discussed below in section VI.A., we are concerned that the exposure data and ventilation levels in this study may not be representative of use of nPB-based aerosols in industry. Personal breathing zone samples taken from the collars of workers showed 8-hour time-weighted average (TWA) exposures of 5.5, 13, and 32 ppm for workers using 310 g of nPB from a spray can [10] (Linnell, 2003). The two higher exposure levels occurred in the absence of any local or regional ventilation; the use of both local and regional ventilation equipment with ventilation levels around 1900 ft^3/min was associated with the lowest exposure level. Short-term exposures of 370, 1,100 and 2,100 ppm taken from a room with regional ventilation at 640 cubic feet per minute (cfm), when averaged over an 8-hour period, resulted in exposures of 12, 34, and 66 ppm (Linnell, 2003). EPA considers the highest of these 8-hour values, 66 ppm, not to be representative of worker exposure from inhalation because the measurement was taken from the worker's wrist, rather than from his breathing zone. Another short-term exposure value of 190 ppm, taken from a vented booth with local ventilation at 472 cfm, in addition to the regional ventilation of 640 cfm, resulted in an 8-hour exposure of 6 ppm. Similar measurements were made in another study we considered in developing the June 2003 NPRM: Eight hour (8-hr) TWA exposures of 11.3, 15.1, 17.0, and 30.2 ppm with regional ventilation of 300 cubic feet per minute from a fan for the entire room (Confidential submission, 1998).

Another commenter submitted information on aerosol exposures for a number of other available alternative aerosols (Werner, 2003). While these data do not include nPB, based on the properties of aerosol solvents, we believe it is reasonable to compare concentrations of these different chemicals to potential nPB exposures. The study compared concentrations of eight different chemicals that are acceptable under the SNAP program in aerosol formulations: HFE–7100, HFE–7200, trans-1,2-dichloroethylene, HCFC–225ca and –225cb, acetone, pentane, and HFC–134a. In this study, with ventilation of only 48 cfm, 8-hr TWA exposure from the different chemicals varied from 35.5 ppm to 194.0 ppm,[11] below the recommended exposure levels for these particular chemicals (ICF, 2006a) but above the range of exposure levels that EPA would consider acceptable for nPB.

In addition, we considered new information from modeling of nPB exposures (ICF, 2006a). The modeling examined exposure levels that would be expected at ventilation levels of 450 cfm, 625 cfm, and 1350 ppm, considering the molecular weight of the compound and the composition of different aerosol blends. EPA's SNAP program has previously used these same levels to calculate potential aerosol exposures, based upon exposure levels expected during benchtop cleaning. In a space with an air exchange rate of 450 ft_3/minute or less,[12] EPA's modeling predicts 8-hour average exposure of approximately 16 to 17 ppm if a user sprays 450 g of nPB (approximately 1 lb),[13] and corresponding higher exposure values at higher spray rates (e.g., 33 ppm if the amount of nPB sprayed is 900 g) (ICF, 2006a). Exposure values were predicted to be lower at higher ventilation rates.

Since the June 2003 NPRM, EPA received a new submission for nPB in coatings (Lake City Army Ammunition Plant, 2003). The Lake City Army Ammunition Plant provided data on workplace exposure to nPB (Lake City Army Ammunition Plant, 2004). The mean exposure at this facility was 3.7 ppm. Out of 31 samples taken, 25 (approximately 80%) were below 5 ppm. Only one of 31 samples had an exposure level above 10 ppm, and that exposure value was approximately 21 ppm.

B. Newly Available Data on Health Effects

Since publication of the June 2003 NPRM, EPA has examined additional occupational (Table 7) and animal (Table 8) studies that have become available:

[10] Unlike samples measured directly in the breathing zone, area samples measured in the study are not considered representative of actual exposure and are not discussed here. Short-term measurements taken over 15 minutes from personal samplers, although in some cases extremely high, are not discussed in detail here because available toxicity information does not indicate need for a short-term exposure limit for nPB in addition to the 8-hr TWA limit (ACGIH, 2005; ERG, 2004). Additional information on these other samples is in the occupational exposure assessment for aerosols in the risk screen for nPB (ICF, 2006a).

[11] These measurements can be converted to estimates of nPB exposure by multiplying the measured concentration of the alternate chemical by the molecular weight of the same alternate chemical and dividing this by the molecular weight of nPB, 123. After performing this calculation, the equivalent exposure levels for nPB vary from 29.5 ppm to 394.4 ppm.

[12] This corresponds roughly to a regional or room fan at low levels or natural air currents in an open area. Confined areas would have even lower air exchange rates with higher exposure levels.

[13] We consider use of 1000 g/day to be the high end of typical use, based on the setup of one of the exposure studies (Confidential Submission, 1998). The typical aerosol solvent user in the electronics industry uses a can per day (Williams, 2005). This is comparable to or slightly less than the spray rate assumed in the modeling.

TABLE 7.—RECENT STUDIES ON nPB OCCUPATIONAL EXPOSURE

Case Study	Sample size/population	Exposure data	Observations	Remarks
Beck and Caravati, 2003.	6 foam cushion factory workers (gluers).	Exposure during 30–40 hr/wk for a 3-month period. Exposure measured in one day was a mean of 130 ppm (range, 91–176 ppm).	Lower leg weakness accompanied by pain and difficulty with standing and walking, numbness of legs and feet, hyperreflexia and hypertonicity of lower extremities, dizziness and shortness of breath, and peripheral neurotoxicity. Measured serum bromide levels were elevated, range 44–170 mg/dL.	Small sample size studied. Possible interference or synergistic effects from other adhesive ingredients (1,2-epoxybutane and styrene-butadiene).
Majersik *et al.*, 2004; Majersik *et al.*, 2005 *.	6 foam cushion factory workers (gluers).	5–8 hr/day for at least 2 years with mean air concentration of 130 ppm on last day of study. Measurements taken over 9 hours (equivalent to 92–127 ppm with mean of 108 ppm for an 8-hour TWA).	Subacute onset of lower extremity pain, difficulty walking, and high serum bromide levels in blood. Neurotoxic symptoms persisted for at least 2 years after exposure ended.	Follow-up to Beck and Caravati (2003). Chronic nPB exposure associated with incapacitating neurotoxic syndrome. Initial report from Utah OSHA indicated erroneously that workers were not spraying while measurements were taken. In fact, adhesives were being sprayed and fans were being used only for portions of the day that measurements were taken, making measurements likely to be representative of conditions during the past several months at the plant.
Ichihara *et al.*, 2004a	37 chemical plant workers (24 males and 13 females).	12 hour shifts over 2-day period, mean concentration of 82 ppm (range, 0–170 ppm).	Mucosal irritation (nose, throat), headache, dizziness, constipation, intoxication, and feeling light-headed or heavy-headed. Four female workers complained of disruption or cessation of menstruation. No severe chronic symptoms of neurological damage at less than 170 ppm. Several workers had hemoglobin and hematocrit values outside of the normal range and were diagnosed with mild anemia; most of these cases also showed signs of iron deficiency.	Inadequate exposure characterization and exposure to other potential toxicants, small sample size, and no appropriate control group. Healthy worker effect possible, where more sensitive workers left the factory between 1996 and 1999.
Ichihara *et al.*, 2004b	27 female chemical plant workers (23 age matched with 23 females from a beer factory control group).	1-day exposure period, range of exposure, 0.34–49 ppm.	Responses indicated anxiety, fatigue, confusion, tension, and depression. Changes in menstrual status but not statistically significant. Effects on peripheral and central nervous system—diminished vibration sensation of the foot; significantly longer distal latency in the tibial nerve; decreased values in sensory nerve conduction velocity in the sural nerve; and lower scores on memory and perceptual tests. No comparable effects seen in control group.	No long-term exposure measurements, small sample size; lack of controls for age, height, and body-weight. Low B vitamin levels in normal range in some workers but researchers concluded this did not cause observed neurological effects. Additionally, the study did not indicate any significant differences in the prevalence of menstrual cycle abnormalities.
Nemhauser, 2005 * ...	Foam cushion factory workers (gluers) in North Carolina.	In 1999 study, 16 workers exposed to mean air concentration of 116 ppm, and 12 sprayers exposed to mean concentration of 108 ppm with range of 58 to 254 ppm. In 2001 study, 13 workers exposed to nPB mean air concentration of 46 ppm and 12 sprayers were exposed to mean concentration of 101 ppm, with range of 38 to 281 ppm.	Higher exposure to nPB and dose-dependent relationship among those who reported anxiety, headache, and ataxia. No reproductive abnormalities reported in medical survey for men or women. Semen analysis found no differences between exposed and unexposed workers.	Small sample sizes studied with moderate worker participation. Healthy worker effect likely occurred: Those that had most significant health effects had already removed themselves from workplace by the time of the study. No arsenic found at the plant. Neurotoxic effects caused by nPB. See related Health Hazard Evaluation (HHE): NIOSH, 2003a.
NIOSH, 2003a	16 workers in 1999 evaluation; 13 workers in 2001 follow-up evaluation.	1999 Initial Site Visit: Geometric mean nPB concentration (from personal samples), 81.2 (range, 18–254 ppm); 2001 follow-up: Geometric mean, 81.2 ppm (range, 7–281 ppm).	Most workers exposed to nPB levels >25 ppm. Exposure concentrations lower in 2001 than 1999, but difference not statistically significant. Headache, anxiety, feeling drunk associated with nPB exposure. Hematological endpoints unaffected in exposed group. No correlation of nPB exposure with sperm or semen indices or with neurological abnormalities.	Arsenic was not attributed to occupational exposure. The National Institute for Occupational Safety and Health (NIOSH) stated that neurological symptoms may have been related to excess exposure to nPB, but that no other effects could conclusively be related to nPB exposure.

TABLE 7.—RECENT STUDIES ON nPB OCCUPATIONAL EXPOSURE—Continued

Case Study	Sample size/population	Exposure data	Observations	Remarks
Raymond and Ford, 2005 *.	4 foam cushion factory workers (gluers) in North Carolina.	Exposure study conducted 9 months after index patient became ill indicated workers exposed to mean nPB air concentration of 116 ppm. 4 workers exposed for 2–3 weeks before initial symptoms detected.	Dizziness, numbness, ocular symptoms, lower extremity weakness and unsteady gait, weakness, hypesthesia, and ataxic gait in all four workers. Symptoms decreased over time but after six years, at least one worker re-exposed twice at other furniture plants; one or more still suffer from ataxia.	Small sample size, possible confounding effect from arsenic.
Toraason *et al.*, 2006	41 and 22 foam cushion factory workers (gluers) at 2 facilities.	1–3 days up to 8 hrs per day, with concentrations of 0.2–271 ppm at facility A, 4–27 ppm at facility B.	No statistically significant differences in DNA damage with worker's nPB exposure. In vitro results showed nPB increased DNA damage.	Authors find limited evidence that nPB poses a ''small risk'' for DNA damage.

* Presentation at North American Congress of Clinical Toxicology on September 14, 2005.

TABLE 8.—RECENT ANIMAL STUDIES OF nPB EFFECTS

Citation	Population/sample size	Exposure	Observations	Comments
Fueta *et al.*, 2002.	24 male Wistar rats (12 control, 12 exposed).	6 hr/day, 5 day/wk for 8 weeks at 700 ppm.	No apparent morphological defects in the brain	Only one exposure concentration was used (which is higher than the level already associated with other toxic effects in rodents [400 ppm]) and a shorter exposure duration (8 weeks) was used than the other subchronic studies that have shown effects (13 weeks).
Fueta *et al.*, 2004.	58 male Wistar rats (29 experimental and 29 in control group).	6 hr/day, 5 day/wk for 4 to 8 weeks, 700 ppm.	No apparent morphological defects in the brain. Chronic inhalation changes brain enzyme levels and electrical activity that is reversible after exposure.	Unclear how nPB and/or its metabolites directly act on receptors or channels in the brain.
Furuhashi *et al.*, 2006.	80 Wistar rats (pups and their dams).	(1) 8 hr/day (4 hr, followed by 2.5-hr rest period, followed by 4 hr exposure), 7 day/wk during gestation and nursing at 0, 100, 400, 800 ppm in first experiment. (2) Dams exposed (800 ppm) during gestation (Group A), offspring not exposed during nursing. Offspring of Group (B) of unexposed dams were nursed by exposed dams. Offspring in control groups C and D not exposed.	(1) At 800 ppm: most rat offspring died within 2 days of birth or in utero;. body weights of dams significantly lower, organ weights of offspring significantly lower after weaning at 800 ppm in males, and 800 and 400 ppm in females. Most sperm and estrous indicators did not differ among the groups, although the rate of sperm arrival to the cauda epididymis was significantly lower in the 400 ppm group. Inconsistent or no changes in biochemical indicators. (2) Second experiment No difference in body weights and pregnancy endpoints between exposed (800 ppm) and unexposed dams. Live offspring at birth, survival rates, body weights, significantly decreased, number of dead offspring, significantly increased in 800-ppm groups.	Authors concluded that exposure to nPB during pregnancy and lactation adversely affects growth and survival of offspring. Low numbers of offspring in 400- and 800-ppm exposure groups prevent statistical testing EPA comments: Study design inconsistent with guidelines for developmental studies, so comparisons to previous studies are difficult. The mechanism for the adverse effects observed is not known (e.g., indirect exposure through milk, changes in nursing behavior, changes in milk production, exposure in utero, changes in the intrauterine environment)
Honma *et al.*, 2003.	Fisher 344 male rats.	8 hr/day, 7day/wk for three weeks exposed to 0, 10, 50, 200 or 1000 ppm (5 rats/dosage and 5 different tests).	3 week exposure to greater than 50 ppm temporarily increased locomotor activity and ambulatory and rearing behaviors in male rats.	Neurological effects shown to be transient and reversible at ≥ 200 ppm (Ichihara *et al.*, 2000) or absent after 28 days of exposure at concentrations ≥ 400 ppm (ClinTrials, 1997a) or after 90 days of exposure at concentrations up to 600 ppm (ClinTrials, 1997b) in other studies. Human studies are limited by co-exposures and poor estimates of exposure concentrations. Thus, EPA is not using this endpoint as the basis of an AEL.

TABLE 8.—RECENT ANIMAL STUDIES OF nPB EFFECTS—Continued

Citation	Population/sample size	Exposure	Observations	Comments
Ishidao *et al.*, 2002.	30 male Wistar rats.	6 hr/day, 5 day/wk with test groups (10/dose) exposed to 700 ppm for 4 and 12 weeks and 1500 ppm for 3 and 4 weeks.	nPB is metabolized rapidly in the rat following exposures to nPB at concentrations ≥ 700 ppm for at least 3 weeks.	Exposure levels are higher than in some other studies and are much higher than concentrations seen in the workplace. nPB metabolism appears to be different following multiple exposures as compared to acute exposures (see RTI, 2005; ICF, 2006b).
NTP, 2003	Female and male B6C3F1 mice and Fischer 344 rats.	0, 62.5, 125, 250, 500 (rats and mice), 1000 (rats) ppm for 90 days.	Early mortality in mice at 500 ppm accompanied by liver and lung cell degeneration and cytoplasmic vacuolization. Cytoplasmic vacuolization also in rat liver cells ≥ 250 ppm (males) and ≥ 500 ppm (females), with increased severity at higher doses. No adverse central nervous system (CNS) effects or histopathology reported.	Unpublished study. Conclusions drawn from a review of raw data from the National Toxicology Program (NTP) Web site. In general, the severity of effects (in non-reproductive organs) is slightly higher at lower concentrations in male rats than in females.
RTI, 2005/ Garner *et al.*, 2006.	Female and male B6C3F1mice and Fisher 344N rats, four to six animals in each test trial.	Exposure via several injection routes (intraperitoneal, intravenous, cannuliz-ation), inhalation, and dermal. Injection conducted via bolus dosing at 5, 20, or 100 mg/kg body weight. Inhalation concentrations of 70, 240, 800, and 2700 ppm administered in a single acute exposure. A dose of 96 mg/kg was applied to a shaved area on the backs of six male rats with a non-occlusive charcoal filter covering (that is, one that does not prevent evaporation).	nPB cleared by mice after 48 hours as follows: 45% as volatiles in the breath, 28% as CO_2 in the breath, 26% in urine, <3% in feces, and 2% retained in the body. Distribution was similar in male rats, although amounts in urine and volatiles in breath were higher in mice. At higher doses, the amount of nPB excreted in urine and as CO_2 decreased, with a much greater change in rats compared to mice. • After pretreatment with a cytochrome P450 inhibitor, a decrease in nPB cleared as CO_2 (80%) and urine (40%); pretreatment with a glutathione inhibitor reduced nPB cleared as CO_2 by 10% and urine by 4%. • The Vmax, a measure of the maximum initial rate of an enzyme-catalysed reaction, is 0.227 for male rats, 0.143 for female rats, 0.329 for male mice and 0.234 for female mice. Half-lives were comparable between males and females at ≤ 800 ppm. • For rats exposed to nPB through skin, 37% of the dose was excreted in volatiles, 1.2 % in urine, 1.7% as CO_2, and 35.7% was on the applicators or in the skin washes. Only 0.32% remained in tissues. Airborne concentrations of nPB in the chamber were 4 to 10 ppm after dosing.	The study authors concluded that: • nPB administered via intraperitoneal injection or inhalation is eliminated mostly through the breath, with urine as a secondary path. • Metabolism of nPB appears to be primarily through cytochrome P450 enzymes (CYP2E1), particularly in mice; glutathione conjugation still plays an important role in rats. • At high concentrations, female rats may have a decreased capacity to metabolize nPB compared to male rats. • nPB decreases glutathione levels in the liver after a one-time exposure to nPB at concentrations as low as 70 ppm. • nPB is not appreciably absorbed (~3–27%) in rats following dermal application. EPA agrees with these points, except we found that gender differences were only apparent in rats at very high concentrations (2700 ppm and greater). We also note that: • Inhalation tests were only one-time exposures at very high concentrations (240 to 2700 ppm), and thus, are not comparable to long-term dosing at the lower levels expected in the workplace. • Results of dermal testing are not conclusive because of potential for inhalation exposure.
Sohn *et al.*, 2002.	40 male and 40 female Sprague-Dawley rats.	6 hr/day, 5 day/wk for 13 weeks, test groups (10/sex/dose) were exposed to 0, 200, 500 or 1250 ppm.	No effects on mortality, activity, weight gain, food consumption, urinalysis, or histological effects in the brains and spinal cords.	The differences between the various studies may be due to variability in exposure methodology and achieved concentrations of nPB.
Stump, 2005*.	125 female/125 male rats in first generation and 100 female/100 male rats in offspring generation.	Both test groups of 25 male rats/25 female rats exposed to 0, 100, 200, 250, 500 and 750 ppm nPB for 10 weeks.	Decreased litter size at 250 and 500 ppm in both generations. Decreased fertility at 100 and 250 ppm in offspring generation. Complete infertility at 750 ppm.	Reproductive effects seen in both rat sexes which is a strong signal of reproductive toxicity potential in humans. The author considers 100 ppm to be a lowest observed adverse effect level (LOAEL). This is a presentation of data from WIL, 2001.
Wang *et al.*, 2003.	36 male Wistar rats.	8 hr/day, 5 day/wk for 12 weeks, test groups (9 rats) were exposed to 0, 200, 400 or 800 ppm.	Decrease in creatine kinase in the spinal cord (17% at ≥ 200 ppm) and brain (15–28% at ≥ 400 ppm) at 200, 400, and 800 ppm. No physical or behavioral changes observed.	Small study size. No behavioral changes or physical symptoms were observed in the animals, so the toxicological relevance of the decrease in creatine kinase is questionable.
Yamada *et al.*, 2003.	40 female Wistar rats.	8 hr/day, 7 day/wk with test groups (9/dose) exposed to 0, 200, 400, or 800 ppm for 12 weeks.	All rats at 800 ppm became seriously ill after 7 weeks of exposure. Significant decrease in antral follicles at ≥ 200 ppm, and a decrease in the number of female rats exhibiting regular estrous cycles in 400-ppm females during 7–9 weeks of exposure and at 2–3 weeks at the 800-ppm dose.	Data suggest that nPB is affecting the maturation of ovarian follicles. A no observed adverse effect level (NOAEL) of 200 ppm is identified with a LOAEL of 400 ppm for the changes in estrus cycles.

* Presentation at North American Congress of Clinical Toxicology on September 14, 2005

• In general, the recent animal studies collectively show a range of effects associated with nPB exposure that are qualitatively consistent with previously published findings. (Exceptions to this are the negative results regarding central nervous system toxicity in the NTP (2003) study and the Sohn (2002) study on rats.) Some general conclusions we draw from the new studies include:

• Case reports of nPB exposure in the workplace indicate that severe, possibly irreversible, neurological effects may occur at sustained concentrations of approximately 100 ppm or greater (Beck and Caravati, 2003; Majersik *et al*, 2004; Majersik *et al.*, 2005; Ichihara *et al.*, 2002a; Miller, 2005; Raymond and Ford, 2005). In other cases, similar or higher concentrations up to 170 ppm caused less severe nervous system effects (Nemhauser, 2005; NIOSH, 2003a; Ichihara, 2004a). Some neurological effects occurred in workers at levels of less than 50 ppm (Ichihara *et al.*, 2004b). Because of design and methodological limitations, such as small numbers of subjects and limited exposure information, these studies do not provide a sufficient quantitative basis to derive an acceptable exposure limit.

• Data on female rats indicate that nPB affects the maturation of ovarian follicles and the ovarian cycle (Yamada *et al.*, 2003), consistent with previously reviewed data (WIL , 2001; Sekiguchi *et al.*, 2002).

• Some data on occupation exposure suggest that workers exposed to nPB may have experienced menstrual disorders (Ichihara *et al.*, 2002; Ichihara *et al.*, 2004b). However, the data are not statistically significant and are not sufficient to conclude that nPB exposure caused these female reproductive effects.

• Data on DNA damage in workers exposed to nPB was not statistically significant (Toraason *et al.*, 2006).

• Metabolic data on mice and rats indicate some species differences. Metabolism of nPB appears to be primarily through cytochrome P450 enzymes, particularly in mice; glutathione conjugation also plays a role, and a bigger role for rats than for mice (RTI, 2005).

• New data from toxicological studies on nervous system effects remain inconsistent and equivocal concerning the level at which nervous system effects occur (Fueta *et al.*, 2002; Fueta *et al.*, 2004; Honma *et al.*, 2003; Ishidao *et al.*, 2002, NTP, 2003; Sohn *et al.* 2002, Wang *et al.*, 2003).

A number of commenters on the June 2003 NPRM suggested that EPA should consider neurotoxicity as the endpoint in deriving an AEL for nPB (Linnell, 2003; Werner, 2003; Rusch and Bernhardt, 2003, Rusch, 2003). In particular, they requested that EPA consider the study conducted by Wang (2003) and epidemiological data on neurotoxic effects of nPB. As discussed above, the data on neurotoxic effects of nPB on workers are limited and are not sufficient to determine acceptable levels of exposure. In the study on rats by Wang *et. al.* (2003), measurements found a decrease in enzymes in the spinal cord and brain at 200, 400, and 800 ppm, but the animals displayed no physical or behavioral changes. Because of the lack of physical symptoms or behavioral changes, EPA does not believe that the decrease in enzyme levels in the central nervous system are toxicologically relevant. Other studies examining neurological effects of nPB showed those effects to be transient and reversible at and above 200 ppm (Ichihara *et al.*, 2000a). Exposures of 200 ppm and above for three weeks had no effect on memory, learning function, or coordination of limbs (Honma, 2003); the effect of spontaneous locomotor activity seen in this study at 50 ppm and above was not considered adverse by the authors. In other studies, neurological effects were absent after extended periods of exposure-after 28 days of exposure at concentrations > 400 ppm (ClinTrials, 1997a) and after 90 days of exposure at concentrations up to 600 ppm (ClinTrials, 1997b). Thus, although neurological effects have been associated with nPB exposure, the data are currently insufficient to quantify and determine acceptable exposure levels based on this endpoint.

One commenter on the June 2003 NPRM requested that EPA evaluate a study by Yamada *et al.* (2003), a study published just prior to the June 2003 NPRM. In response to the comment, EPA reexamined Yamada *et al.*, 2003 and re-evaluated the literature (Ichihara *et al.*, 1999, 2002, 2004a,b; Sekiguchi, 2002, Yamada *et al.*, 2003; WIL, 2001) to assess potential reproductive toxicity in females (ICF, 2006a, Att. A). A peer review of these effects is in the public docket (ICF, 2004b). Multiple benchmark analyses found a statistically significant decrease in the number of estrous cycles and increase in estrous cycle length associated with nPB exposure, consistent with other reproductive endpoints, namely reductions in sperm motility, decreased live litter size, and change in prostate weight (ICF, 2002a; ICF, 2006a; Stelljes and Wood, 2004; TERA, 2004).

Reproductive effects are seen in males, females, and offspring, and in different generations of the two-generation study (WIL, 2000). They also are consistent with results seen in one-generation reproductive studies, such as Ichihara *et al.* (2000b) and Yamada (2003). See Table 6 above in section IV.E.1. for a more complete list of the different health effects. EPA believes that the preponderance of the data indicate that exposure levels sufficient to protect against male reproductive effects (*e.g.*, reduced sperm motility) would be in a range from 18 to 30 ppm, in the range of 17 to 22 ppm to protect against female reproductive effects (*e.g.*, number and length of estrous cycles), and at approximately 20 ppm for effects related to reproductive success (live litter size). We have not determined what specific level within those ranges (an overall range of 17 to 30 ppm) is most appropriate for evaluating whether a substitute may be used safely and consider these exposure levels to be potentially acceptable. Therefore, we assessed the acceptability of nPB by considering whether it could be used safely in the three end-uses. For end-uses with likelihood of exposures above the range we are considering, while following typical industry practices, we are proposing an unacceptability determination. For end-uses that as their normal practice meet exposure levels below the range we are considering, we are proposing an acceptability determination. It is not necessary for 100% of exposure data for an end use to be above or below the range of 17 to 30 ppm in order to make a determination on the acceptability of an end use because there may be occasional cases that are not following common industry practices. Unusual events would not indicate the industry's likelihood of keeping exposures at safe levels, and thus, should not be the determining factor in our decision. Rather, we consider the overall likelihood that typical industry use would consistently result in acceptably low or unacceptably high exposures.

In the June 2003 NPRM, EPA used a BMDL of 169 ppm as a point of departure for developing an AEL. Some commenters stated that data from the F1 generation is inappropriate for calculating occupational exposure, citing statements from toxicologists, such as, ''occupational exposure involves adults only.'' They also stated that EPA has not required this for other chemicals and that the resulting value is more conservative than what is normal and appropriate for industrial toxicology (Morford, 2003f, Ruckriegel, 2003). Others stated that sperm motility effects on the F1 generation are appropriate to consider (Risotto, 2003; Farr, 2003), particularly because of the

potential for *in utero* effects and because of the consistent presence of these reproductive effects in both generations and at multiple levels. EPA acknowledges that using data from the F1 offspring generation may be conservative because the pups in the F1 generation were exposed to nPB between weaning and sexual maturity (WIL, 2001). During occupational exposure, this period of exposure would not occur because children under age 16 are not allowed to work in industrial settings. However, EPA believes that because of the potential for *in utero* effects that would only be seen in the offspring generation, looking only at the F0 parental generation could underestimate the adverse health impacts of a chemical. Therefore, we believe it is appropriate to consider effects seen in both the F0 parental generation and the F1 offspring generation. Further, effects on sperm motility in the parental and offspring generations are seen at levels generally consistent with multiple reproductive effects seen in both generations and both sexes exposed to nPB, such as estrous cycle length, lack of estrous cycling, the number of estrous cycles in a given period of time, fertility indices, and the number of live pup births (TERA, 2004; ICF, 2006a; SLR International, 2001). Therefore, we believe that the available data indicate that in order to protect against adverse reproductive effects, an exposure level within the range of 17 to 30 ppm, would potentially be acceptable. We would reach the same proposed decisions of unacceptability based upon data from the F0 generation.

C. Evaluation of Acceptable Exposure Levels for the Workplace

To calculate acceptable exposure levels for nPB, EPA uses standard risk assessment methods delineated in Agency guidance (U.S. EPA, 1994b) in evaluating data, choosing a benchmark dose level or a NOAEL, and making the adjustments and uncertainty factors prescribed to account for differences in the duration of exposure and in sensitivity between and within species.

Adjustment for Occupational Exposure Pattern

To account for differences between the exposure pattern used in the WIL study (6 hours per day for 7 days per week) when compared to a typical workweek of 8 hours per day and 5 days a week, a ''human equivalent concentration'' (HEC) is first calculated by adjusting the benchmark dose level:

$$(BMDL\ in\ ppm \times 6\ hours/8\ hours) \times 7\ days/5\ days = HEC\ (ppm)$$

HECs for the major health endpoints are shown in Table 6 above in section IV.E.1.

Uncertainty Factors

According to EPA risk assessment guidance for reference concentrations (RfC) (EPA 1994a), uncertainty factors of up to 10 may be applied to the HEC for each of the following conditions:

(1) Data from animal studies are used to estimate effects on humans;

(2) Data on healthy people or animals are adjusted to account for variations in sensitivity among members of the human population (inter-individual variability);

(3) Data from subchronic studies are used to provide estimates for chronic exposure;

(4) Studies that only provide a LOAEL rather than a NOAEL or benchmark dose; or

(5) An incomplete database of toxicity information exists for the chemical.

EPA believes that two uncertainty factors are appropriate for this database to account for that: (1) Physiological differences between humans and rats; and (2) variability within the working population. The rationale for the use of these two uncertainty factors is described below.

EPA RfC guidelines state that an uncertainty factor of 10 may be used for potential differences between study animals and humans. This factor of 10 consists in turn of two uncertainty factors of 3—the first to account for differences in pharmacodynamics [14] and the second to account for differences in pharmacokinetics [15] between the study of animal and humans. (The value of three is the square root of 10 rounded to one digit, with 10 representing an order of magnitude (EPA,1994a). In practice, EPA uses the square root of 10 when there are two or four uncertainty factors of 3, yielding a total uncertainty factor of 10 or 100, and we use a value of 3 when multiplying by an uncertainty factor of 10). By EPA RfC guidelines (U.S. EPA, 1994b), no adjustment for differences in pharmacokinetics is necessary in this instance because the blood/air partition coefficient [16] for nPB in the human (7.1) is less than in the rat (11.7), indicating that the delivered dose of nPB into the bloodstream in rats is slightly higher than in humans. Consistent with Appendix J of EPA's RfC guidelines for an inhaled compound that exerts its effects through the bloodstream, EPA applies an uncertainty factor of 1 for pharmacokinetics.

However, EPA recognizes that the lack of an uncertainty adjustment for pharmacokinetic differences between animals and humans rests on a default approach applied to category 3 gases described in Appendix J of its guidelines for deriving an inhalation RfC. This default approach assumes that nPB's toxicokinetics follow a model in which: (1) The toxicity is directly related to the inhaled parent compound in the arterial blood, and (2) the critical metabolic pathways scale across species, with respect to body weight, in the same way as the ventilation rate. Given the hypothesized metabolic pathways for nPB (ICF, 2002a; CERHR, 2002a), it is plausible that toxicity in rats may be related to a reactive metabolite in the target tissue rather than the blood level of the parent compound. EPA is not aware of any quantitative data on nPB metabolism in humans, or evidence implicating the biologically active agent or mode of action. Some commenters on the June 2003 NPRM stated that EPA should use an uncertainty factor of 1 or 2 to extrapolate from animals to humans (Weiss Cohen, 2003), while others suggested uncertainty factors of 2 or 3 for pharmacokinetics, or an overall uncertainty factor of 10 for rat to human extrapolation because of a lack of information on the metabolism and mode of action of nPB and because the rat is an insensitive model for effects on male reproduction in humans (Werner, 2003; Rusch and Bernhardt, 2003). Commenters provided no data to indicate that (1) the toxicity is not directly related to the inhaled parent compound in the arterial blood, or (2) the critical metabolic pathways do not scale across species, with respect to body weight, in the same way as the ventilation rate. Recent studies provide additional data regarding metabolism of nPB in rats and mice (RTI, 2005), but data on human metabolism are still lacking.

One analysis of these metabolic data suggested that mice are less sensitive to the effects of nPB than rats and hypothesized that humans would also be less sensitive than rats (Stelljes, 2005). However, this analysis makes numerous assumptions about toxic nPB metabolites and metabolic activation pathways that have not been confirmed by experimental data. A review of this

[14] Pharmacodynamics refers to the biochemical and physiological effects of chemicals in the body and the mechanism of their actions.

[15] Pharmacokinetics refers to the activity or fate of chemicals in the body, including the processes of absorption, distribution, localization in tissues, biotransformation, and excretion.

[16] The blood/air partition coefficient is the ratio of a chemical's concentration between blood and air when at equilibrium.

analysis is available in the public docket (ICF, 2006c). Despite the difference in metabolic pathways for nPB in mice and rats (RTI, 2005), EPA finds no significant species-specific differences in toxicity exist between rats and mice at inhaled concentrations <500 ppm for 13 weeks (NTP, 2003; ICF, 2006b). These metabolic and subchronic inhalation studies conducted under the National Toxicology Program did not specifically examine for reproductive toxicity or nPB metabolism in target organs that control reproductive function. In summary, there are little available data about the metabolic activation or reactive metabolites responsible for reproductive toxicity in rodents. Similarly, for nPB, there is little information available about differences and similarities between rodents and humans. Given this circumstance, EPA assumes, in the absence of evidence to the contrary, that nPB toxicity is directly related to the inhaled parent compound in the arterial blood and that the critical metabolic pathways scale across species in a manner similar to the ventilation rate. Therefore, the Agency is proposing to apply an uncertainty factor of 1 to account for interspecies differences in pharmacokinetics.

EPA requests additional data and comment from the public on the pharmacokinetics, metabolism, and mode of action of nPB that will help determine whether an interspecies uncertainty factor greater than the default value of 1 is warranted to account for pharmacokinetics. If data become available indicating that nPB does not conform to the constraints assumed by the default pharmacokinetic model in the RfC guidelines, we would revise our risk assessment for nPB as necessary, and apply an uncertainty factor for pharmacokinetics consistent with the RfC guidelines in extrapolating from animal to humans. Depending on the resulting difference in the acceptable exposure levels, we would also revise our acceptability determinations accordingly. Given the available data on the blood/air partition coefficient and EPA RfC guidance in the absence of other information, EPA is applying the same rationale used for other compounds reviewed under EPA's SNAP program with a comparable amount of data where an uncertainty factor of 1 for pharmacokinetics was applied. To account for uncertainty in pharmacodynamics of nPB, EPA is applying the default uncertainty factor of 3. This follows the procedures in EPA's RfC guidelines for situations where there are no data to compare pharmacodynamics in rats versus humans (U.S. EPA, 1994b). Recently published data on humans and rodents do not decrease the uncertainty regarding the pharmacodynamics of nPB; therefore, modification of the uncertainty factor of 3 for differences between species is not justified.

One commenter stated that EPA did not cite any data that describes the size, condition, or very existence of a subpopulation of men especially sensitive to the effects of nPB. In addition, this commenter asserted that sensitive populations are not traditionally considered when deriving an occupational exposure limit, and that EPA has never mentioned a concern with sensitive subpopulations in previous SNAP reviews.

EPA disagrees with the comments. There are preexisting reproductive conditions as well as significant variability in fertility among otherwise healthy adults in the workplace. Women over age 35 and men over age 40 have fertility rates up to three times lower than those of people in their twenties, with effects on the ovarian cycle and on sperm motility as major factors changing with increasing age for women and men, respectively (Dunson *et al.*, 2002). Adding damage from other factors, such as smoking or occupation exposure to chemicals such as nPB, therefore, can potentially harm an individual's ability to reproduce further (Dunson, *et al.* 2002). In addition, we note that EPA has used uncertainty factors in the past to protect sensitive subpopulations on other chemicals reviewed under the SNAP program (e.g., trifluoroiodomethane at 69 FR 58907, October 1, 2004). For deriving AELs from health endpoints such as liver effects and neurotoxicity, the SNAP program typically has assigned an uncertainty factor of 1 for sensitive subpopulations because we assume that individuals who are especially susceptible to these effects will have greater difficulty working than most people. However, there is no connection between the ability to reproduce and the ability to work in the industrial sectors discussed in this rule. Thus, we find it appropriate to apply an uncertainty factor greater than 1 for reproductive effects.

Some commenters on the June 2003 NPRM said that an uncertainty factor of 1 is appropriate for variability within the working population because sensitive subpopulations will not be present in the working population (Stelljes, 2003, Morford, 2003f). Other commenters stated that there will be very little difference in variability between the worker population and the general population and that it is unclear why EPA selected an uncertainty factor of 3 instead of 10 (Werner, 2003). Commenters suggested uncertainty factors for variability in the working population of 1, 2, and 5 (Stelljes, 2003; Weiss Cohen, 2003; Werner, 2003).

EPA's RfC guidelines recommend an uncertainty factor of 10 to account for intraspecies variability within the general population. However, in deriving an acceptable exposure limit, EPA's focus is on worker exposure, which excludes some particularly vulnerable populations, such as children, most adolescents, and the elderly. Thus, we believe that a full uncertainty factor of 10, as for the general population, may be higher than necessary to protect workers. However, because of variability in reproductive function due to factors present among workers, such as aging, smoking, and sexually transmitted disease, and because there is no screening of workers that would make workers more likely to have healthy reproductive systems than non-workers of the same age, we believe than an uncertainty factor of 1 is not sufficiently protective. Under EPA guidelines, 3 is a default value for an uncertainty factor where there is indication that a value less than an order of magnitude (10) but greater than one is appropriate, and where the available data are not sufficiently quantified to select a specific value. Therefore, EPA is again proposing to assign an uncertainty factor of 3 to account for difference between individuals in the working population.

The uncertainty factors of 3 for animal-human extrapolation and 3 for variability within the human working population (each representing the square root of ten, half an order of magnitude) yield a composite uncertainty factor of 10. This factor was applied to all HECs derived from reproductive studies summarized in Table 6 in section IV.E.1 above. The resultant values are higher than the value that would have been obtained had EPA used the TLV of 10 ppm developed by the ACGIH. EPA believes that the benchmark dose approach more accurately characterizes the observed effects and provides a more robust utilization of the data.

D. Other Analyses of nPB Toxicity

Analyses Reviewed During Preparation of June 2003 NPRM

One commenter on the June 2003 NPRM stated that documents by Drs. Doull, Rozman, Stelljes, Murray, Rodricks, and the KS Crump Group were not acknowledged (Morford, 2003f, g, and h). EPA specifically mentioned

and responded to the occupational exposure limit recommendations from Drs. Rozman, Doull, and Stelljes in the preamble to the June 2003 NPRM at 68 FR 33298–33299. In addition, EPA included more detailed written responses to these derivations and the evaluation by Dr. Rodricks in the online docket prior to proposal (EPA–HQ–OAR–2002–0064–0017, –0018, and –0019). We considered these documents in preparation of the June 2003 proposal as well as this proposal.

In general, we disagree that the neurotoxicity endpoint selected by Drs. Rozman and Doull is the most appropriate endpoint for setting an AEL and we agree with Dr. Stelljes that sperm motility in the F1 offspring generation of the WIL, 2001 2-generation study is an appropriate endpoint. We agree with a number of these documents that data from the F1 generation may be conservative because workplace exposure would not include exposure to the F1 animals during the four-week period from weaning to sexual maturity. However, EPA believes that because of the potential for *in utero* effects that would only be seen in the offspring generation, looking only at the F0 parental generation could underestimate the adverse health impacts of a chemical. Therefore, it was appropriate for us to consider effects seen in both the F0 parental generation and the F1 offspring generation. Further, effects on sperm motility in the parental and offspring generations are seen at levels generally consistent with multiple reproductive effects seen in both generations and both sexes exposed to nPB, such as estrous cycle length, lack of estrous cycling, the number of estrous cycles in a 3-week period, and the number of live pup births (TERA, 2004; ICF, 2006a; SLR International, 2001; Stelljes and Wood, 2004). We believe that the document from the K. S. Crump group, a survey of the ratio of points of departure to TLVs set by the ACGIH, is not relevant now that the ACGIH has issued a TLV specifically for nPB. ACGIH appears to set an AEL for nPB that is a factor of 10 lower than the endpoint cited as lowest (100 ppm for effects on pup weight) (ACGIH, 2005). Thus, ACGIH has used an approach for nPB consistent with the total uncertainty factor of 10 assigned by EPA. In general, we find that these documents submitted by the commenter assigned uncertainty factors in a manner inconsistent with EPA guidance. This would result in a higher AEL than we would determine following the approach EPA has used on other chemicals, as well as an AEL that in our view would not sufficiently protect human health from nPB's effects because of multiple sources of uncertainty in available data (*e.g.*, variability within the working population, differences between animals and humans in how nPB affects the reproductive system).

Since the 2003 NPRM, a number of reviews of nPB toxicity have been issued, several of which include recommendations for occupational exposure limits. CERHR, 2003a and 2004a are similar to CERHR, 2002a, the expert panel report for nPB for the Center for the Evaluation of Risks to Human Reproduction (CERHR). CERHR, 2003b and 2004b are similar to CERHR, 2002b, the CERHR expert panel's report for iPB. These documents discuss the usefulness of data in available studies for assessing nPB's health impacts and establish No Observed Adverse Concentration levels of 100 ppm for both male and female reproductive effects in animals, but do not derive an AEL. Rozman and Doull, 2005 derived an AEL of 25 ppm for nPB based on neurotoxicity, using more recent information than Rozman and Doull, 2002.

The Stelljes and Wood (2004) analysis is similar in its results to SLR International (2001), a study by the same authors. EPA previously reviewed SLR International, 2001 in developing the June 2003 NPRM. Both studies by Stelljes and Wood concluded with a recommended AEL of 156 ppm, based on male reproductive effects and uncertainty factors of 1 in driving the AEL. Stelljes (2005) reviews RTI's 2005 study on metabolism of nPB in mice and rats and other literature and speculates that humans should be less sensitive to nPB than either mice or rats based on differences in metabolite production. Stelljes (2005) recommends that no uncertainty factor is required to extrapolate from animals to humans and that an uncertainty factor of no more than 2 is appropriate to account for differences within the working population. All of these documents assigned uncertainty factors in a manner that is not sufficiently supported by the available data and that is inconsistent with EPA's guidance. For example, Stelljes (2005) discusses metabolic data in rats and mice from RTI, 2005 and concludes that on this basis, the uncertainty factor for extrapolation from animals to humans should be 1. However, the metabolic data relate to pharmacokinetics—the activity of chemicals in the body—and do not address EPA's proposed uncertainty factor of 3 related to pharmacodynamics (the biochemical and physiological effects of chemicals in the body and the mechanism of their actions). Using the AEL from one of these documents would result in a higher, less protective AEL than we would determine following the approach EPA has used for other chemicals under the SNAP program and would not consider multiple sources of uncertainty in health effects (i.e., variability within the working population and differences between animals and humans in how nPB affects the reproductive system). Thus, we are concerned that the AELs based on these documents would not be sufficiently protective and would result in an inappropriate acceptability decision. Detailed reviews of these documents are available in the public docket.

Toxicological Excellence in Risk Assessment (TERA), 2004 reviews other AEL derivations for nPB, performs a benchmark dose (BMD) analysis, and recommends an AEL of 20 ppm based on live litter size. This analysis is consistent with EPA guidance for BMD modeling and for assigning uncertainty factors. A review of this document is available in the public docket (ICF, 2004c).

ICF (2004b, 2006a) derived an AEL for nPB based upon female reproductive effects. ICF (2004b, 2006a) discussed the relevant literature (Ichihara *et al.,* 1999, 2002, 2004a, 2004b; Sekiguchi, 2002; Yamada *et al.*, 2003; WIL, 2001) and calculated mean estrous cycle length and the mean number of estrous cycles occurring during a three-week period at different exposure levels in the WIL, 2001 2-generation study. ICF (2004b, 2006a) found statistically significant reductions in the number of estrous cycles in a three-week period, both including and excluding females that had stopped their estrous cycles, at 250, 500, and 750 ppm in the F0 parental generation and at 500 and 750 ppm in the F1 generation. ICF (2004b, 2006a) conducted BMD modeling and calculated BMDL values of the number of estrous cycles in a three-week period that varied from 102 to 208 ppm, depending upon the model used and the benchmark criteria selected. All data were calculated based on the mean reductions in estrous cycle number calculated from the WIL, 2001 study. Values were calculated for the F0 generation; the number of data for the F1 generation was too small for statistical analysis. The BMDLs that ICF calculated for the number of estrous cycles in a three-week period were 162 ppm and 208 ppm, depending on the benchmark response criteria (10% change in response vs. one standard

deviation) and using a linear-heterogeneous model.

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) listed both nPB and iPB as reproductive toxins on the basis of developmental, male reproductive, and female reproductive toxicity under the State's Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65 (OEHHA, 2006). Under this law, California is required to list chemicals known to be carcinogenic or to be reproductive toxins and to update that list at least annually.

The American Conference of Government Industrial Hygienists (ACGIH) issued a recommended Threshold Limit Value™ (TLV) of 10 ppm (time-weighted average) for nPB (ACGIH, 2005). ACGIH summarized numerous studies showing different effects of nPB and identified no observed effect levels (NOELs) of 200 ppm for hepatotoxicity (ClinTrials, 1997b) and less than 100 ppm for developmental toxicity, as evidenced by decreased fetal weight (Huntingdon Life Sciences, 2001).

OSHA has not developed a permissible exposure limit (PEL) for nPB that EPA could use to evaluate toxicity risks [17] from workplace exposure. In prior SNAP reviews, EPA has used ACGIH TLVs where available in assessing a chemical's risks and determining its acceptability if OSHA has not set a PEL. ACGIH is recognized as an independent, scientifically knowledgeable organization with expertise in issues of toxicity and industrial hygiene. However, in this case, EPA believes that ACGIH's TLV for nPB of 10 ppm has significant limitations as a reliable basis for an acceptable exposure limit, especially given the availability of other, more comprehensive analyses described in this proposal. First, according to the authors of the Huntingdon Life Sciences study, the decrease in fetal weight was an artifact of sampling procedure that biased the data (test animals were only sacrificed at the end of the day rather than at random). The CERHR expert panel excluded ''aberrantly low'' fetal weights from one litter in this study and calculated a BMDL greater than 300 ppm for this endpoint after removing those outlier data (CERHR, 2002a, 2003a, and 2004a). TERA calculated a similar BMDL when analyzing the same data set (TERA, 2004). Further, the reference list in the documentation on the TLV indicates that ACGIH did not review and evaluate all the studies available prior to the development of the recommended exposure limit. For example, key supporting articles that reported disruption of estrous cycles (Yamada *et al.*, 2003 and Sekiguchi *et al.*, 2002) were not discussed in the TLV documentation. Further, ACGIH did not provide sufficient reasoning for the selection of the chosen endpoint over others (e.g., reproductive toxicity and/or neurotoxicity). The lack of discussion of applied uncertainty factors also prevents a determination of how ACGIH arrived at a TLV of 10 ppm. In summary, EPA is not basing its proposed acceptability determination for nPB on the ACGIH TLV because: (1) Other scientists evaluating the database for nPB did not find the reduced pup weight to be the most sensitive endpoint; (2) benchmark dose (BMD) analysis of the reduced pup weight data (CERHR, 2002a; TERA, 2004) results in a higher BMDL (roughly 300 ppm) than those for reproductive effects; and (3) ACGIH may not have reviewed the complete body of literature as several studies discussing neurotoxicity and female reproductive effects were omitted from the list of references. A number of reviews of this document are available in the public docket (ICF, 2004d; O'Malley, 2004).

We note that, even if EPA had selected the ACGIH TLV as our basis for assessing the risks of nPB, we would have proposed the same determinations. In the specific coatings application that we propose to find acceptable subject to use conditions at the Lake City Army Ammunition Plant, exposure data showed an ability to meet an exposure level of 10 ppm, with the vast majority of measurements below that value. Thirty-four of 35 samples had concentrations below 10 ppm, and the mean concentration for the plant was less than 4 ppm (Lake City Army Ammunition Plant, 2004). For the aerosol and adhesive end uses, it would be even more difficult to achieve an exposure level of 10 ppm than to achieve a level in the range that EPA is considering (17 to 30 ppm). Thus, we would have proposed the same decisions for nPB of acceptable, subject to use conditions for coatings and unacceptable for aerosols and adhesives using the ACGIH's TLV of 10 ppm to assess health risks. Despite some flaws in its derivation, the TLV of 10 ppm is less than two-fold lower than the low end of the range of acceptable exposure levels based on the most sensitive reproductive endpoints. This small difference is well within the uncertainty required to extrapolate a benchmark dose from an experimental study in rats to an occupational exposure limit in humans.

E. Community Exposure Guideline

In this proposal, EPA is using a community exposure guideline (CEG) of 1 ppm to evaluate potential health risks among populations living near facilities using nPB. This community exposure guideline is an estimate of a continuous inhalation exposure (averaged over 24 hours per day, 7 days per week) to the general public (including sensitive subgroups) that is likely to be without an appreciable risk of adverse health effects during a lifetime.

Based on EPA risk assessment guidelines (US EPA, 1994b), the CEG was derived using the lowest BMDL from effects listed in Table 6 as the point of departure (110 ppm for vacuolation in the liver of animals in the F1 generation of WIL, 2001). The HEC was calculated as follows:

110 ppm x (6 hours exposure in study/ 24 hours avg time) x (7 days/7 days) = 28 ppm

EPA used an uncertainty factor of 3 for extrapolation from animals to humans, as discussed above in section VI.A, and an uncertainty factor of 10 for variability within the general population, consistent with EPA's RfC guidelines. Dividing the HEC of 28 ppm by 30 yields a community exposure guideline of approximately 1 ppm. If we had used sperm motility (HEC of 42 ppm based on a BMDL of 169 ppm) or number of estrous cycles (HEC of 40 ppm based on a BMDL of 162 ppm) as starting points, we would calculate the same approximate CEG value. We note that, following RfC guidelines, EPA's community exposure guideline includes a number of conservative assumptions, including exposure adjustments to protect an individual exposed for up to 24 hours a day for 70 years (U.S. EPA, 1994b, p. 1–5).

EPA evaluated general population exposure using EPA's SCREEN3 (U.S. EPA, 1995b) air dispersion model to assess the likely maximum concentration of nPB from single sources.[18] EPA used data collected from

[17] Vendors of nPB-based products have recommended a wide range of exposure limits, from 5 ppm to 100 ppm (Albemarle, 2003; Chemtura, 2006; Docket A–2001–07, item II–D–19; Enviro Tech International, 2006; Farr, 2003; Great Lakes Chemical Company, 2001).

[18] We performed the modeling for a facility using nPB-based adhesives because the nPB emissions from this type of facility were expected to be higher than those from facilities using nPB for other end uses. Thus, if a facility using adhesives would not result in emissions exceeding the CEG, facilities using nPB in aerosols or in metals, electronics, or

Continued

actual facilities (Swanson, 2002) to characterize two scenarios: (1) A typical large, high-use adhesive application facility where the closest resident is 100 meters away; and (2) a smaller facility with average-use adhesive application in an urban area, where the nearest resident is only 3 meters away. The results indicated that modeled exposures in either scenario did not exceed the CEG of 1 ppm. The highest exposure modeled was 0.24 ppm at a distance of 3 meters away from the source in the urban scenario, while most other exposures were at least an order of magnitude lower (ICF, 2003; ICF, 2006a). Because the community exposure guideline was not exceeded for any of the exposure scenarios in this conservative screening approach, EPA has concluded that nPB exposure to populations living close to facilities using nPB is not a concern for purposes of determining the acceptability of nPB under the SNAP program.

VI. What listing is EPA proposing for each end use, and why?

In this rule, EPA is proposing to find nPB unacceptable in adhesive and aerosol solvent end uses, and acceptable subject to use conditions in the coatings end use. The proposed listings, summarized in Table 9, are intended to allow the use of nPB where it does not pose a human health risk significantly greater than other substitutes and prohibit nPB's use where nPB exposure cannot be maintained, or is unlikely to be maintained, at even the highest level considered in this proposal (i.e., 30 ppm). We also are taking comment on an alternate approach of finding nPB acceptable subject to use conditions in the above end uses (see Section VII.A).

TABLE 9.—PROPOSED DECISIONS BY END USE AND SECTOR

For nPB in this sector and end use:	Our proposal is to list nPB as:	And our proposed alternate approach is:
Aerosols:		
Aerosol solvents	Unacceptable	Acceptable, subject to use conditions.[2]
Adhesives, Coatings, and Inks:		
Coatings	Acceptable, subject to use conditions [1]	Acceptable, subject to use conditions.[2]
Adhesives	Unacceptable	Acceptable, subject to use conditions.[2]

[1] Use of nPB in this end use is limited to coatings at facilities that, as of May 30, 2007, have provided EPA information demonstrating their ability to maintain acceptable workplace exposures (i.e., the Lake City Army Ammunition Plant).

[2] Use conditions would include proposed requirements that users must (1) meet an exposure limit of 20 ppm on an eight-hour time-weighted average, (2) monitor workers' exposure to nPB using a personal breathing zone sampler on an eight-hour time-weighted average initially and periodically (every 6 months or longer, depending on the concentration during initial monitoring), and (3) keep records of the worker exposure data on site at the facility for at least three years from the date of the measurement.

A. Aerosol Solvents

In this rule, EPA proposes to find nPB unacceptable in the aerosol solvent end use. There are a number of aerosol solvent alternatives that do not pose any risk for ozone depletion or for ground level smog formation.[19] EPA's greatest concern with nPB-based aerosols is that users of nPB as an aerosol solvent cannot reliably maintain exposures at sufficiently low levels to ensure that workers are protected. This finding is based on measured exposure data and model estimations indicating the likelihood of elevated concentrations associated with nPB-based aerosols given typical ventilation conditions. A number of other acceptable solvent alternatives are available that can be used at exposure levels below their respective acceptable exposure limits.

Ventilation conditions are an important consideration in evaluating potential risks within this end-use category. ''Benchtop cleaning'' of individual parts, which is feasible under exhaust hoods or in spray booths with adequate ventilation, comprises 25% or less of the market involving ODS substitutes for aerosols (U.S. EPA, 2004). According to industry information and several commenters, the majority of the market for nPB-based aerosols involves in-place applications requiring a portable aerosol, such as cleaning energized electrical contacts and switches, maintenance in underground mines, or cleaning active elevator motors (CSMA, 1998; U.S. EPA, 2004; Williams, 2005). These applications often occur in tightly confined spaces where it is not feasible to install ventilation equipment or remove parts to ventilated areas (CSMA, 1998; Linnell, 2003; Werner, 2003). Other acceptable substitutes, such as blends of HFEs or HFCs and trans-dichloroethylene, are available in these end uses. One commenter also suggested that a user of an nPB-based aerosol will assume that they are being provided with a product that offers similar margins of safety as the product being replaced (i.e., HCFC–141b) and therefore can be used under the same conditions (Werner, 2003).

The likelihood that nPB aerosol solvents would be used in poorly ventilated spaces is of particular concern given the likelihood of elevated exposure levels. The exposure data from aerosol solvent use are extremely limited. These data are from simulations of a number of situations where nPB might be used, such as benchtop cleaning of electronics and cleaning automotive brakes, rather than data from facilities currently using nPB in manufacturing or maintenance processes. Thus, the available exposure data may not be representative of ventilation levels normally used with nPB-based aerosols and may not adequately represent exposure levels during in-place cleaning, industry's most common application for nPB-based aerosols. The distribution of exposure levels in the seven samples ranging from 5.5 to 32 ppm corresponded to the range of ventilation rates reported—0, 300, 640, and 1900 cfm—with the highest ventilation rate resulting in the lowest exposure levels and the lower ventilation levels resulting in the values above 30 ppm. The ventilation rate most consistent with use in a confined space for in-place cleaning, 0 cfm, resulted in half the exposures (one of two) exceeding 30 ppm. The highest ventilation rate, 1900 cfm, occurred at a vented booth, which would not be feasible to install for in-place cleaning applications—the majority of applications for nPB-based aerosols. The middle ventilation rates of 300 and 640 cfm occurred during use of a fan for an entire room (regional ventilation), as might be expected for benchtop cleaning (Confidential submission, 1998), but not for in-place cleaning in confined spaces. In modeling nPB exposure from aerosol solvent use at a low ventilation rate of

precision cleaning also would not result in emissions exceeding the CEG.

[19] Smog, also known as ground-level ozone, is produced from emissions of volatile organic compounds that react under certain conditions of temperature and light.

450 cfm, a level that might be expected during benchtop cleaning, 8-hour average concentrations of 16.5 to 33 ppm are predicted, depending on the amount of nPB used (ICF, 2006a). Exposure levels for confined spaces with even lower ventilation rates, as we would expect for in-place cleaning, would be even higher, likely exceeding the high end of the range that EPA is considering. Short-term exposures of 370 and 1,100 ppm taken from workers' collars in a room with regional ventilation at 640 cfm, when averaged over an 8-hour period, resulted in exposure levels of 12 and 34 ppm. These exposures occurred as a result of using nPB over a period up to 15 minutes, so it is likely that users would have greater exposure than 30 ppm if they used nPB for longer than 15 minutes per day, as with multiple uses. The available data sets have a small sample size, may not be representative of in-place cleaning in confined spaces, and do not provide EPA with convincing data that nPB is likely be used safely, at exposure levels at or below the highest level in the range we are considering for evaluation of acceptability.

EPA is concerned that many, and perhaps most, uses of nPB aerosol solvents result in a high probability of exposures at or above even the upper end of the range of exposures that the Agency is considering to be potentially acceptable. EPA is aware of no data on ventilation levels demonstrating that most users of aerosol solvents, or of nPB in particular, would use aerosols in locations with sufficiently high ventilation levels to protect human health (e.g., 1900 cfm or greater). We request data on worker exposure levels, typical ventilation rates, and patterns for usage of nPB-based aerosols, considering both benchtop and in-place use.

EPA has found numerous other aerosol solvents acceptable. These aerosol solvents can be used safely in a manner consistent with their respective acceptable exposure limits. This is highlighted in a study comparing concentrations of eight different chemicals that are acceptable under the SNAP program in aerosol formulations: HFE-7100, HFE-7200, trans-1,2-dichloroethylene, HCFC-225ca and -225cb, acetone, pentane, and HFC-134a. In this study, with ventilation of only 48 cfm, 8-hr TWA exposure from the different chemicals varied from 35.5 ppm to 194.0 ppm, and all chemicals met their respective recommended exposure levels (ICF, 2006a). As discussed above in section V.A, when these concentrations are adjusted for the chemicals' respective molecular weights, they would correspond to nPB concentrations of 29.5 to 394.4 ppm, which is at or above even the highest level the Agency would consider acceptable. The ventilation level in this study is closer to what we would expect in a confined space where fans or vents cannot be installed, as for in-place cleaning. Based on these considerations, the Agency believes that nPB used as an aerosol solvent would impose significantly more risk to human health than other alternatives available for this end use.

B. Adhesives

EPA proposes to find nPB unacceptable in the adhesive end use. As for aerosol solvents, we found that some alternative adhesive formulations could reduce particular environmental risks more than nPB, such as generation of ground level ''smog'' or ozone depletion potential. However, we find the greatest concern in this end use is with nPB's human health effects. We propose to find nPB unacceptable in adhesives because it poses significantly greater risk to human health as compared to other available alternatives in this end use.

In the June 2003 NPRM, we initially proposed to find nPB acceptable in adhesives based on the SNAP program principle that ''EPA does not intend to restrict a substitute if it poses only marginally greater risk than another substitute * * *. The Agency also does not want to intercede in the market's choice of available substitutes, unless a substitute has been proposed or is being used that is clearly more harmful to human health and the environment than other alternatives.'' (68 FR 33294, citing the original March 18, 1994 SNAP rule at 59 FR 13046). At the time of the proposal, we considered data from NIOSH monitoring and health hazard evaluations for three facilities using nPB-based adhesives. At two of the three facilities, NIOSH worked together with the companies to install state-of-the-art ventilation equipment. Looking at exposure data from all workers after ventilation improvements, we believed it would be possible for facilities to meet the proposed AEL of 25 ppm (68 FR 33294).

- One public commenter suggested that EPA should reconsider whether industrial exposures consistently occur and/or can be controlled to a level at or below 25 ppm (Werner, 2003). We reevaluated the exposure data for the two plants that had improved their ventilation, focusing on exposure to the workers that receive the highest exposures because they directly spray the nPB-based adhesive. We found that, even in the best case, a substantial number of workers spraying nPB-based adhesives would be exposed above the highest level in the range we are considering.
- NIOSH investigators initially reported that mean exposures to nPB ranged from 60 to 381 ppm (8-hour time weighted averages) at three different foam-fabrication facilities using nPB-based adhesives (NIOSH, 2000a, 2000b, 2001, 2002a, 2002b, 2003a). In one facility, average (mean) nPB exposures were reduced from 169 ppm to 19 ppm, following installation of ventilation equipment (NIOSH, 2000b). Although use of spray booths at this facility reduced the average exposure level to 19.4 ppm for all workers, the majority of the sprayers directly using nPB-based adhesives still would be exposed at unacceptably high levels. Out of fourteen sprayers at the Custom Products facility:
- Six, or 43% of sprayers, would be exposed to more than 30 ppm.
- Nine, or 64% of sprayers, would be exposed to more than 25 ppm.
- Ten, or 71% of sprayers, would be exposed to more than 20 ppm.
- Eleven, or 79% of sprayers, would be exposed to more than 15 ppm.
- Thirteen, or 93% of sprayers, would be exposed to more than 10 ppm.

At another facility using nPB-based adhesives, the average exposure was reduced from 58 pm to 19 ppm after the company installed ventilation recommended by NIOSH (NIOSH, 2001). Data on exposure for sprayers found fewer individuals receiving high exposures than at the facility monitored in NIOSH (2000b), but 65% (22 of 34) of exposure samples for sprayers were higher than 15 ppm, 33% (11 of 34) were higher than 20 ppm and 15% (5 of 34) were higher than 25 ppm after improving ventilation.

Overall, 42% of sprayers in these two facilities using nPB-based adhesives were exposed to concentrations of nPB greater than 20 ppm (21 of 48 workers) and 23% (14 of 48 workers) were exposed to more than 25 ppm, even after installing state-of-the-art ventilation with assistance from NIOSH. Sprayers had significantly higher individual exposures than workers who did not work directly with the nPB-based adhesive.

In response to public comment and additional information available to EPA since the June 2003 NPRM, we now propose that use of nPB-based adhesives poses significantly higher risks to human health than other available adhesives. Since the June 2003 NPRM, there have been a number of reports of

workers working with nPB-based adhesives that have suffered adverse, persistent neurological effects that resulted in hospitalization (Beck and Caravati, 2003, and Majersik *et al.*, 2004, 2005; Calhoun County, 2005; Miller, 2005; Raymond and Ford, 2005). Based on data from actual facilities using adhesives, it is estimated that a facility using nPB with average adhesive application rates and average ventilation rates would have exposure levels of approximately 60 ppm on an 8-hr time-weighted average (ICF, 2006a). Modeling of exposures at high adhesive application rates and average or lower ventilation rates resulted in exposures of approximately 250 to 2530 ppm (ICF, 2006a). We believe these modeling results show that most adhesive users would exceed acceptable exposure levels by significant margins and that it is unlikely that adhesive users would be able to use nPB safely.

Considering the exposure data for nPB-based adhesives, we believe it is unlikely that, even with improved ventilation, adhesive users could reduce exposures to acceptable levels on a consistent basis. In the best case seen, a facility with low to average initial exposure levels was able to reduce exposures to the middle of the range EPA is considering after extensive assistance from NIOSH in installing state-of-the-art ventilation. We expect that many facilities will begin with higher exposure levels and will not have the same level of assistance to improve ventilation, thus making it unlikely that they would achieve acceptable exposures. Given the information above, we are concerned that nPB-based adhesives cannot be reliably used in a manner that protects human health. We request comment and further data on whether it is feasible to use nPB-based adhesives with worker exposure levels consistently at or below any of the values in the range of exposure levels that EPA is considering potentially acceptable (i.e., 17 to 30 ppm).

The available information indicates that all acceptable carrier solvents in adhesives other than nPB have projected or actual exposure less than the appropriate workplace exposure limit EPA used in finding those substitutes acceptable. Examples of other carrier solvents currently used in adhesives and acceptable under the SNAP Program include hydrocarbon solvents, acetone, methylene chloride, and water. EPA finds that there are other available alternatives that pose significantly less risk to human health and the environment compared to nPB in the adhesives end use.

During the public comment period on the June 2003 NPRM, one commenter representing the adhesives industry stated that there are some small but critical applications that require nonflammability and high solvency (Collatz, 2003). The commenter did not specify what those applications are, and whether there was information showing that other types of adhesives, such as those using water, flammable solvents, or methylene chloride, are technically infeasible in these applications. We request comment and data on whether there are any unique applications in the adhesives end use for which there are no technically feasible alternatives other than nPB and thus, for which nPB should be allowed. If so, and if determined that nPB should be unacceptable except where no other substitutes are feasible, we would consider finding nPB acceptable subject to narrowed use limits, with requirements for each end user to perform a demonstration that there are no other technically feasible alternatives for their particular site, to install local exhaust ventilation equipment designed to reduce exposures to acceptable levels and to perform worker exposure monitoring. Alternatively, if there was sufficient information provided during the public comment period showing that there are applications in which nPB can be safely used, we would consider finding nPB acceptable in adhesives, subject to use conditions requiring installation of local exhaust ventilation and worker exposure monitoring. This would allow for use of nPB in any applications where it may be used safely if any such applications exist.

C. Coatings

We are proposing to find nPB acceptable, subject to use conditions, for facilities that, as of May 30, 2007, have provided EPA information demonstrating their ability to maintain workplace exposure levels below even the minimum level of the range of exposures that EPA is considering to be potentially acceptable (i.e., 17 to 30 ppm). The SNAP submission with information on coatings was made for a single facility and EPA is unaware of anyone else interested in using nPB in this end use. Therefore, there are currently no analyses indicating whether nPB would pose significantly greater risks in any coating applications other than this facility. Workplace exposure levels to nPB from ammunition sealant at Lake City Army Ammunition Plant ranged from less than 1 ppm up to 21 ppm on an eight-hour time-weighted average. Thirty-four of 35 samples had concentrations below 10 ppm, and the mean concentration for the plant was less than 4 ppm (Lake City Army Ammunition Plant, 2004). The vast majority of measurements show worker exposure well below the lowest level in the range of exposures that EPA is considering. Thus, we believe that nPB can be used as safely as other acceptable solvents used at their acceptable exposure limits under the conditions at this facility.

Other acceptable substitutes for ozone-depleting substances in coatings, in general, include oxygenated solvents, hydrocarbon solvents, terpenes, hydrofluoroethers 7100 and 7200, benzotrifluorides (include parachlorobenzotrifluoride), monochlorotoluenes, trans-1,2-dichloroethylene, chlorinated solvents, water-based formulations, and high-solids formulations. In the particular application for ammunition coatings, the submitter evaluated a large number of alternatives and found that n-propyl bromide was the only one of 29 solvents tested that could meet performance specifications at this facility (Harper, 2005). Thus, it is not clear that there are other substitutes available for this specific application, and exposure data show that in this specific application, nPB can be used in a way that does not pose significantly greater risks to human health compared to other acceptable substitutes in the coatings end use.

VII. What other regulatory options did EPA consider?

EPA considered several different options, but we prefer the approach proposed in this rule. We also take comment on the options discussed below.

A. Alternate Option for Comment: Acceptable With Use Conditions Requiring Exposure Limit and Monitoring

We also take comment on a proposed alternate approach in which nPB would be acceptable subject to use conditions in all the end uses addressed in this action. Under this alternate approach, users would meet an exposure limit, monitor exposure of workers using nPB, and keep records to demonstrate compliance with these requirements. For purposes of this alternative proposal, we selected 20 ppm to use as an exposure limit above which use would be unacceptable, and 10 ppm as an action level that allows reduced exposure monitoring, for the reasons discussed below in section VII.A.1, ''Use Conditions and Their Rationale.'' However, we are soliciting comment on whether a different exposure level within the 17 to 30 ppm range should

be selected. The following requirements would apply at each facility where nPB is used:

Exposure Limit

The owner or operator would be required to ensure that workers using nPB are exposed to no more than 20 ppm on an 8-hour time-weighted average. The exposure limit could be met through engineering controls (e.g., ventilation equipment), work practices, or reduced use of nPB.

Initial Worker Exposure Monitoring

For each facility where nPB is used, the owner or operator of the facility would be required to ensure that personal breathing zone air samples of each nPB user's exposure would be collected on an eight-hour, time-weighted average initially within 90 days after a final rule becomes effective. Monitoring measurements may be taken with an organic chemical monitoring badge on the collar or a tube filled with charcoal on the collar.

Periodic Exposure Monitoring

(1) The owner or operator of the facility would be required to ensure that personal breathing zone air samples of user exposure are collected periodically on an eight-hour, time-weighted average depending on the results of the most recent set of exposure data. A monitoring program could be instituted by the company or by the nPB supplier for that facility. Periodic sampling requirements would be based on the most recent monitoring results, as follows:

TABLE 10.—ALTERNATIVE APPROACH EXPOSURE LEVELS AND PERIODIC EXPOSURE MONITORING

If exposure measurements for nPB are at this level:	Then the owner or operator:
all measurements at or below 10 ppm	is not required to perform periodic exposure monitoring.
all measurements at or below 20 ppm, with some measurements above 10 ppm.	must take personal breathing zone samples again at least once in the next six months.
at least one measurement above 20 ppm	must stop using nPB in the application exceeding the exposure limit until exposure data show that 20 ppm can be consistently met in the vast majority of cases.
unknown, in cases of new workplace conditions increasing exposure or new applications of nPB.	must take personal breathing zone samples as a test before using nPB in new industrial applications or conditions, or within 7 days of an emergency caused by a leak, rupture or breakdown, and use this value to determine the next time monitoring is required.

(2) For periodic monitoring, the owner or operator would be allowed either to monitor each nPB user's exposure, or to monitor exposure of a representative nPB user in each job classification in a work area during every work shift, where the monitored nPB user is expected to have the highest exposure.

(3) The owner or operator would be allowed to discontinue the periodic 8-hour TWA monitoring for nPB users at the facility where at least two consecutive sets of measurements taken at least seven days apart are below 10 ppm.

Monitoring for New Conditions or Applications

Whenever there is a change in workplace conditions that may increase exposure or whenever a new application of nPB is introduced, the owner or operator would be required to take personal breathing zone samples accounting for all nPB users as a test before using nPB in manufacturing or repair. These could be either samples for each nPB user or samples representing each job classification in a work area during a work shift, so long as the samples are based on the user with the likely highest exposure. Examples of changes in workplace conditions that may increase exposure include changes in production, process control equipment, or work practices, or a leak, rupture, or other breakdown.[20] Examples of introduction of a new application of nPB include aerosol contact cleaning in a location with regional ventilation or natural ventilation, where previous measurements were carried out on workers in a location with local ventilation. If the change occurs because of an unpredictable emergency, then the owner or operator would need to ensure exposure monitoring takes place within 7 days of the change.

Sampling Methods and Accuracy

Exposure samples would be required to be analyzed either by NIOSH method 1003 for halogenated hydrocarbons or method 1025 for 1-bromopropane and 2-bromopropane or by another method that is accurate to ±25% at the 95 percent confidence level.

Recordkeeping Requirements

The owner or operator of the facility would be required to keep records of the monitored exposure data at the facility for at least three years from the date the measurements were taken for purposes of this rule. These records would be required to be made available in the event of a facility inspection or a request for the data by EPA. Note that the EPA's recordkeeping requirement does not affect OSHA's standard on access to employee exposure and medical records, which requires retaining any exposure records for at least 30 years (29 CFR 1910.1020(d)(ii)).

The regulatory listings by end-use under this alternate approach that the Agency requests comment on would be as follows:

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[20] See 29 CFR 1910.1052(d)(4)(i).

Table 11. *Alternate Approach:* AEROSOLS
SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End Use	Substitute	Decision	Use Conditions	Further Information
erosol solvents	n-propyl bromide (nPB) as a substitute for CFC-113, HCFC-141b, and methyl chloroform	Acceptable subject to use conditions	1) The owner or operator of a facility must ensure that users of nPB achieve an exposure limit of 20 ppm on an 8-hour time-weighted average. 2) The owner or operator of a facility must ensure that workers using nPB are monitored for their exposure to nPB using personal breathing zone samples on an eight-hour, time-weighted average (8-hr TWA) no later than 90 days after the effective date of this rule. 3) If the most recent data from exposure monitoring shows all personal breathing exposures to be at or below 10 ppm, no periodic exposure monitoring is required. If the most recent data from exposure monitoring shows all exposures to be at or below 20 ppm, but some above 10 ppm, the owner or operator must take personal breathing zone samples for nPB users at least once during the next six months. 4) The owner or operator may discontinue the periodic 8-hour TWA monitoring for nPB users at the facility where at least two consecutive sets of measurements taken at least seven days apart are below 10 ppm. 5) The owner or operator must determine the exposure of each nPB user by either taking personal breathing zone air samples of each user's exposure or samples that are representative of each user's exposure. The samples are representative where the owner or operator has taken one or more personal breathing zone air samples for at least one nPB user in each job classification in a work area during every work shift, and the nPB user sampled is expected to have the highest exposure to nPB. 6) The owner or operator also must perform exposure monitoring when a change in workplace conditions indicates that employee exposure may have increased or whenever new applications of nPB are introduced. Perform exposure monitoring before making planned changes, and perform monitoring no later than 7 days after an emergency change in conditions. 7) All personal breathing zone samples must be analyzed either by NIOSH method 1003 or 1025 or by another method that is accurate to ± 25% at a 95 percent confidence level. 8) The owner or operator must keep records of nPB worker exposure data at the facility for at least three years from the date the measurements were taken.	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. Note that the Occupational Safety and Health Administration (OSHA) may establish a final Permissible Exposure Limit (PEL) standard in the workplace at 29 CFR part 1910 under 42 U.S.C. 7610(a). OSHA's standard on access to employee exposure and medical records requires retaining exposure records for at least 30 years (29 CFR 1910.1020(d)(ii)).

Note: In accordance with the limitations provided in Section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this table shall affect the Occupational Safety and Health Administrations' authority to promulgate and enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)

Table 12. *Alternate Approach:* ADHESIVES, COATINGS, AND INKS SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End Use	Substitute	Decision	Use Conditions	Further Information
Adhesives and coatings	n-propyl bromide (nPB) as a substitute for CFC-113, HCFC-141b, and methyl chloroform	Acceptable subject to use conditions	1) The owner or operator of a facility must ensure that users of nPB achieve an exposure limit of 20 ppm on an 8-hour time-weighted average. 2) The owner or operator of a facility must ensure that workers using nPB are monitored for their exposure to nPB using personal breathing zone samples on an eight-hour, time-weighted average (8-hr TWA) no later than 90 days after the effective date of this rule. 3) If the most recent data from exposure monitoring shows all personal breathing exposures to be at or below 10 ppm, no periodic exposure monitoring is required. If the most recent data from exposure monitoring shows all exposures to be at or below 20 ppm, but some above 10 ppm, the owner or operator must take personal breathing zone samples for nPB users at least once during the next six months. 4) The owner or operator may discontinue the periodic 8-hour TWA monitoring for nPB users at the facility where at least two consecutive sets of measurements taken at least seven days apart are below 10 ppm. 5) The owner or operator must determine the exposure of each nPB user by either taking personal breathing zone air samples of each user's exposure or samples that are representative of each user's exposure. The samples are representative where the owner or operator has taken one or more personal breathing zone air samples for at least one nPB user in each job classification in a work area during every work shift, and the nPB user sampled is expected to have the highest exposure to nPB. 6) The owner or operator also must perform exposure monitoring when a change in workplace conditions indicates that employee exposure may have increased or whenever new applications of nPB are introduced. Perform exposure monitoring before making planned changes, and perform monitoring no later than 7 days after an emergency change in conditions. 7) All personal breathing zone samples must be analyzed either by NIOSH method 1003 or 1025 or by another method that is accurate to ± 25% at a 95 percent confidence level. 8) The owner or operator must keep records of nPB worker exposure data at the facility for at least three years from the date the measurements were taken.	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. nPB, also known as 1-bromopropane, is Number 106-94-5 in the CAS Registry. Note that the Occupational Safety and Health Administration (OSHA) may establish a final Permissible Exposure Limit (PEL) standard in the workplace at 29 CFR part 1910 under 42 U.S.C. 7610(a). OSHA's standard on access to employee exposure and medical records requires retaining exposure records for at least 30 years (29 CFR 1910.1020(d)(ii)).

Note: In accordance with the limitations provided in Section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this table shall affect the Occupational Safety and Health Administrations' authority to promulgate and enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)

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1. Use Conditions and Their Rationale

The major provisions of the use conditions and the related issues that EPA considered in developing the alternate approach that we are taking comment on are as follows:

Exposure limit. A requirement to meet a workplace exposure limit would be an interim measure to ensure that nPB will be used safely until OSHA issues a final permissible exposure limit (PEL) under the Occupational Safety and Health Act. In the event that OSHA issues a final PEL, it would supersede EPA's exposure limit. EPA is specifically deferring to OSHA, and has no intention to assume responsibility to displace OSHA's authority under Public Law 91–596. EPA's exposure limit would not pre-empt the authority of OSHA to take regulatory or enforcement action with respect to exposure to this substance. This is made clear by the Clean Air Act under which EPA would promulgate this regulation (Subchapter VI—Stratospheric Ozone Protection), which provides at 42 U.S.C. 7610 in pertinent part: ''* * * this chapter [Chapter 85—Air Pollution Prevention] shall not be construed as superseding or limiting the authorities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.'' By issuing an exposure limit for nPB, EPA's intention would be to fill existing regulatory gaps during the interim period of substitution away from ozone-depleting compounds and provide the needed margin of protection for human health and the environment until OSHA develops other regulatory controls or standards under appropriate authorities.

As discussed above in section IV.E.1, EPA is considering exposures within the range of 17 to 30 ppm as potentially acceptable in order to determine whether nPB may be used safely in each end use. For purposes of having a clear compliance target under this alternative approach for public comment, we are using 20 ppm as the exposure limit above which use would be unacceptable. We chose this value because we expect it to be protective against the reproductive and developmental effects identified previously (live litter size, sperm motility, estrous cycles). *Worker exposure monitoring.* The worker exposure monitoring requirements under the use conditions in the alternate approach were modeled after OSHA's requirements for monitoring for methylene chloride. 29 CFR 1910.1052(d). We expect that the regulated community would be familiar with this approach and there might be fewer changes for regulated businesses if OSHA later were to establish a workplace standard for nPB. Because the exposure limit would be an 8-hr TWA value that is derived from studies that measured exposure via inhalation, the proposed use conditions require the owner or operator to monitor 8-hr TWA values that measure workers' exposure in the breathing zone (e.g., samples from a worker's collar). We are not proposing to monitor short-term exposures because acute, short-term exposures of nPB are not of significant health concern, so long as long-term exposures are below the 8-hour TWA limit or potentially acceptable exposure levels (ERG, 2004).

Option for monitoring representative set of workers. Personal breath zone samples could be taken either from each worker using nPB or from a representative [21] set of exposed workers expected to have the highest exposure. Allowing exposure monitoring from representative workers using nPB, rather than requiring separate monitoring for each individual using nPB, would reduce overall compliance burden, while still detecting any exposure levels in excess of the exposure limit and avoiding underestimates of exposure.

Initial monitoring. Users already using nPB would need to undergo exposure monitoring no later than 90 days after the date the final rule becomes effective. A user that has never used nPB before would need to perform initial monitoring before beginning to use nPB in the facility's industrial applications.

Periodic monitoring. Monitoring would have to be performed periodically on a schedule based on the results of the most recent set of exposure monitoring data. Monitoring from workers' personal breathing zone would be required during the next six months if an initial measurement finds exposure levels between the action level [22] and the 8-hour TWA exposure limit. No periodic monitoring would be required if initial measurements are below the action level. The action level would be the value that is half the exposure limit, in this case 10 ppm. OSHA standards also set an action level of half the PEL.

Under the alternate approach, monitoring would no longer be required where the most recent exposure monitoring data found all worker exposures at or below 10 ppm. OSHA rules also reduce monitoring requirements for exposures below the action level because if measured values are that low, it is unlikely that any measurement will exceed the PEL unless a major change to the process occurs.

Monitoring for changes in workplace conditions or nPB use. New monitoring would be required if an event occurs that would make the most recent set of monitoring data no longer representative. EPA would expect that the owner or operator would plan new applications of nPB or changes to control equipment or work practices and would perform a test for worker exposure levels before using nPB on a regular basis in that application. In the case of an emergency, such as a breakdown of ventilation equipment or a leak, we would expect exposure monitoring to be performed as soon as possible, and no later than 7 days after the change in workplace conditions. This period is intended to give an owner or operator time to locate and purchase exposure monitoring equipment in an emergency where the equipment may not already be available at the facility.

Monitoring method and accuracy. We take comment on the use of NIOSH methods 1003 and 1025 (NIOSH, 2003b and c) for analyzing nPB exposure under the proposed alternate approach. Several of the studies that supplied EPA with exposure data used this method and they are standardized methods prepared by NIOSH, a recognized authority on industrial hygiene. In addition, we would allow other methods that are accurate to ± 25% at the 95 percent confidence level. Based on the accuracy of available methods, most OSHA standards require exposure monitoring accurate to 25% at the 95 percent confidence level, as in the methylene chloride standard (29 CFR 1910.1052(d)(1)(iii)(A)) and other OSHA standards.

Recordkeeping requirements. We would require that users keep records of the worker exposure data for three years from the date the measurement is taken.[23] This would provide information allowing EPA to determine if facilities are complying with the exposure limit and if workers exposed to nPB are sufficiently protected.

Responsibility for meeting requirements. Under the alternate approach, the owner or operator of a

[21] In its methylene chloride standard, OSHA defined representative sampling as follows: ''The employer has taken one or more personal breathing zone air samples for at least one employee in each job classification in a work area during every work shift, and the employee sampled is expected to have the highest * * * exposure.'' (29 CFR 1910.1052(d)(1)(ii)(A)).

[22] The action level is the exposure level that is half the 8-hour TWA exposure limit. In this case, the action level would be10 ppm.

[23] OSHA's standard on access to employee exposure and medical records requires retaining exposure records for at least 30 years (29 CFR 1910.1020(d)(ii)), and these requirements would not be affected by this regulation.

facility using nPB would be responsible for meeting the rule's use conditions.

2. Advantages and Disadvantages of the Alternate Approach

Setting use conditions that require users to meet an exposure limit and to monitor and keep records to demonstrate achieving the limit would protect the health of nPB users while giving industry more flexibility and more options for ODS substitutes, compared to finding nPB unacceptable. This could be especially useful for users of HCFC–141b as an aerosol solvent that are seeking an effective ODS substitute. If there were any situations in which other available alternatives did not provide as good performance, nPB would still be available as an option, provided the use conditions could be met. The monitoring requirements would encourage good industrial hygiene and safe use of nPB.

Considering the list of use conditions above, we believe that setting use conditions requiring an exposure limit, worker exposure monitoring, and recordkeeping would be complex and potentially confusing. Requiring users to meet the exposure limit, although providing greater potential flexibility, also would provide less certainty about how to comply. A user could spend considerable time and expense trying to meet the exposure limit, only to find that it is not achievable.

Given the limited circumstances under which we expect aerosol and adhesive users could meet an acceptable exposure limit and given the availability of other, less toxic alternatives in both of these end uses, EPA's preferred option is to find nPB unacceptable in aerosols and adhesives. Further, considering that without regulatory requirements, the users of nPB at the Lake City Army Ammunition Plant have been operating with the vast majority of exposure levels below 17 ppm, the low end of the range of exposures that EPA is considering to be potentially acceptable (Lake City Army Ammunition Plant, 2004), it appears unnecessary to require an exposure limit in that application.

B. Regulatory Options Where nPB Would Be Acceptable With Use Conditions Requiring Specific Equipment

We considered use conditions for the adhesive and aerosol solvent end uses that would reduce the human health risks of using nPB by reducing exposure levels with requirements for installation and use of ventilation equipment. We also offer for comment use conditions that would require aerosol dispensing equipment that would reduce exposure levels and that would allow use of aerosol blends with reduced amounts of nPB to maintain acceptable exposure levels.

1. Aerosols

For the aerosol solvent end use, EPA considered proposing a requirement for installation of ventilation equipment. Such a use condition would need to specify and define which kinds of ventilation equipment would be necessary. For example, because one study on exposure levels found that exposure levels reliably fell in or below the range that EPA is considering (i.e., 17 to 30 ppm) only where both local exhaust ventilation and regional ventilation equipment were used, a possible requirement would be for installation of both local exhaust ventilation and regional ventilation. We would define local exhaust ventilation as ventilation that removes vapors from a specific work location using ducts and fans. We would define regional ventilation as ventilation that moves air around in a large working area, such as one or more fans used for an entire room. A problem with requiring the type of ventilation equipment that all facilities must use is that it still might not provide enough ventilation in some situations and in other situations may be unnecessary to meet an exposure limit.

Another approach for aerosols we considered was to require a specific level of ventilation. Possible criteria for the level of ventilation would be the air flow rate, in cubic feet per minute (cfm) or cubic meters per second, or the face velocity at the location where a user would work, in feet per minute (fpm) or meters per second face velocity. Based on both modeling and exposure data from one study (ICF, 2006a; Linnel, 2003), an appropriate air flow rate for nPB-based aerosols would be greater than 1900 cfm and an appropriate face velocity would be 170 fpm. Alternatively, we considered requiring that facilities meet the guidelines for face velocity in spray booths from the ACGIH Ventilation Manual, in the range of 100 to 150 fpm, depending on the specific type of booth (ACGIH, 2002).

These options would appear to provide greater flexibility for industry compared to finding nPB unacceptable in aerosol solvents. However, our understanding is that in most aerosol applications, it might not be feasible to install adequate ventilation, and thus, to reduce human health risks. In the case of benchtop cleaning or degreasing, such as during rework of individual parts that are not yet sufficiently clean, it is possible to transport the part to a hood or spray booth to provide sufficient ventilation. However, for applications that require in-place cleaning such as cleaning energized electrical contacts and switches, maintenance in underground mines, or cleaning hot elevator motors, it is not feasible to install ventilation equipment in place or to remove the parts for cleaning in ventilation equipment (CSMA, 1998; Linnell, 2003). Information available to EPA shows that benchtop cleaning is perhaps 25% or less of the market for the ODS being replaced in aerosols (US EPA, 2004) and that electrical contact cleaning makes up the vast majority of the market for nPB-based aerosols (Williams, 2005); thus, we expect that necessary ventilation cannot be installed in most aerosol applications for nPB. It would be difficult to explain and potentially confusing for users that an aerosol product may be used for cleaning in one location in a facility, but not in another, particularly when the ODS being substituted for could be used in all locations at safe exposure levels. Further, it would be difficult for EPA to enforce use conditions on ventilation equipment, because aerosols are portable and can easily be used outside of the ventilation equipment. Other acceptable substitutes, such as blends of HFEs or HFCs and trans-dichloroethylene, are available in these end uses.

Another option that the Agency considered is finding nPB acceptable as an aerosol solvent, subject to the use condition that the aerosol product must be dispensed from a device or a system that is capable of maintaining acceptable exposure levels. The Agency is aware of at least two remote dispensing systems that could potentially mitigate exposures when used with low-pressure aerosols (Micro Care's Trigger Grip™ and Miller Stephenson's Cobra® Solvent Spray Cleaning Brush). Vendor data indicates that each aerosol can may last twice as long when using a remote dispensing system, compared to standard aerosol usage, indicating the ability to halve average exposure levels and reduce total solvent use (Micro Care, 2006). However, these types of systems would only be practical for benchtop cleaning, and not electrical contact cleaning, which comprises the majority of nPB aerosol use. The Agency requests comment on the viability and enforceability of a use condition requiring aerosol dispensing systems or other mitigation devices that could provide sufficient performance while

ensuring acceptable workplace exposure levels of nPB.

Finally, the Agency considered another option by which the use of nPB would be acceptable in aerosol solvent uses, subject to the condition that users may only use blends of no more than fifty percent nPB and the remainder being propellants and other solvents, with manufacturer's recommended exposure guidelines for compounds other than nPB being no lower than 100 ppm. Based on exposure modeling performed on simulations of several commercial blends of nPB and another compound with a higher exposure limit (HFC–365mfc), it appears that users should be able to maintain exposures reliably below the range that EPA is considering for acceptability (i.e., 17 to 30 ppm) when using a blend containing no more than fifty percent nPB by weight at the ventilation levels modeled (ICF, 2006a). We note that the modeling does not consider the possibility that a user might need to use more of a blend with less nPB, since nPB is more aggressive than many other solvents used in aerosols. It also does not address exposure levels in confined spaces as might occur during in-place cleaning with aerosols. We request comment and relevant, empirical data on the 8-hour TWA exposures that can be reliably attained when using blends containing 50% or less of nPB by weight. In order to make this option enforceable, EPA would require users to keep records of nPB-containing aerosol blends they purchase, including the MSDS or other documentation of the proportion of nPB in the blend they use. We request comment on whether this is a feasible, enforceable option and whether it would provide useful flexibility to industry while ensuring adequate health protection.

2. Adhesives

EPA also considered use conditions for ventilation equipment or for specific ventilation levels for use of nPB-based adhesives. However, to date, we have found no study that demonstrates a ventilation option that could consistently achieve even the highest level within the range that EPA is considering for acceptability when using spray adhesives. Even with state-of-the-art ventilation equipment installed with the expert assistance of NIOSH, adhesives users were not able to lower exposure limits sufficient to protect the vast majority of their workers. Modeling of different levels of adhesive usage and ventilation, based on conditions at different facilities indicates that air flow rates would need to be more than 100,000 cfm. Even this high air flow rate might not be sufficient, since an air flow rate of 28,500 cfm resulted in exposure levels of 3.5 to 35 times an acceptable exposure level, depending on the amount of adhesive used (ICF, 2006a, Att. D). Less toxic substitutes such as water-based adhesives and acetone-based adhesives are available in this end use.

VIII. What are the anticipated costs of this regulation to the regulated community?

As part of our rulemaking process, EPA estimated potential economic impacts of this proposed regulation. In our analysis, we assumed that capital costs are annualized over 15 years or less using a discount rate for determining net present value of 7.0%. Because the use condition for coatings still permits nPB's use in the only known coatings application using nPB, we find no additional cost to the user community from this regulatory provision. We found that if this proposed rule were to become final, the cost to the user community of the unacceptability determinations, which are regulatory prohibitions on the use of nPB in adhesives and aerosols, would be in the range of $2.3 to $6.7 million per year for adhesive users and $36.3 to 39.7 million per year for aerosol users.

EPA also estimated the cost to the user community of the use conditions in the proposed alternate approach for aerosols, adhesives, and coatings. The requirements for users to meet an acceptable exposure limit and to perform exposure monitoring would be in the range of $42.3 to 67.5 million per year. The upper end of the range of estimated impacts assumes laboratory grade ventilation for aerosols, which we expect to be significantly more expensive than standard industrial fume hoods or spray booths (approximately $10,000 compared to $1,000 for each hood). For coatings, use of nPB is limited to a single facility that already performs workplace exposure monitoring, and thus, no new costs would be incurred. For aerosols and adhesives, we assumed the installation of fume hoods or spray booths, the use of personal protective equipment, and monitoring for 1.9 to 2.0 times per year on average. Using these assumptions, we calculated the cost of the use conditions in the proposed alternate approach at $18.0 to 24.0 million for adhesive users, and $24.3 to 43.5 million for aerosol users. The estimated cost of the use conditions does not consider that some users could choose to switch to other alternatives at a lower cost.

Estimated costs of the proposed regulation and proposed alternate approach are summarized in Table 13. For more detailed information, see section XIII.C. below and EPA's analysis in the docket (US EPA, 2006).

TABLE 13.—ESTIMATED COSTS OF REGULATORY OPTIONS EPA IS PROVIDING FOR COMMENT

Sector or end use	Requirements under proposed rule	Annual cost of proposed rule	Requirements under alternate approach	Annual cost of alternate approach
Aerosol Solvents	Cease use of nPB and switch to a different ODS substitute.	$36.3 to 39.7 million.	Achieve 20 ppm; exposure monitoring one or two times per year; Recordkeeping.	$24.3 to 43.5 million.
Coatings	Decision applies to use nPB in coatings at facilities that, as of May 30, 2007, have provided EPA information demonstrating their ability to maintain acceptable workplace exposures.	None	Achieve 20 ppm; exposure monitoring, one or two times per year; recordkeeping.	None.
Adhesives	Cease use of nPB and switch to a different ODS substitute.	$2.3 to 6.7 million	Achieve 20 ppm; exposure monitoring, one or two times per year; recordkeeping.	$18.0 to 24.0 million.
Total		$38.6 to 46.4 million.		$42.3 to 67.5 million.

IX. How do the decisions for EPA's June 2003 proposal compare to those for this proposal?

Table 14 compares the acceptability determination and evidence cited in the June 2003 proposal and this proposal.

TABLE 14.—n-PROPYL BROMIDE ACCEPTABILITY DECISION

Proposed decision	2003 proposed rule	Current proposed rule—preferred proposal
Industrial End Use #1: Aerosol Solvents	Acceptable, Subject to a Use Condition (Limiting use to nPB formulations containing no more than 0.05% by weight isopropyl bromide; AEL of 25 ppm [1] on 8-hr TWA recommended.	Unacceptable.
Industrial End Use #2: Adhesives	Acceptable, Subject to a Use Condition (Limiting use to nPB formulations containing no more than 0.05% by weight isopropyl bromide; AEL of 25 ppm [1] on 8-hr TWA recommended.	Unacceptable.
Industrial End Use #3: Coatings	Not addressed	Acceptable, Subject to Use Conditions (Decision limited to coatings at facilities that, as of May 30, 2007, have provided EPA information demonstrating their ability to maintain acceptable workplace exposures.[2]

[1] Proposed acceptable exposure limit of 25 ppm adjust upward from value of 18 ppm based upon nPB's effect on sperm motility from evaluation of the WIL 2001 Study "An Inhalation Two-Generation Reproductive Toxicity Study of 1-Bromopropane in Rats."

(a) ICF, 2001. "Brief Discussion of the BMD Approach: Overview of its Purpose, Methods, Advantages, and Disadvantages." Prepared for U.S. EPA.

(b) ICF, 2002a. "Risk Screen for Use of N Propyl Bromide." Prepared for U.S. EPA, May, 2002.

(c) ICF, 2002b. Comments on the NTP-Center for the Evaluation of Risks to Human Reproduction, Final Report on 1-Bromopropane. Cover Letter Dated 5/9/02.

Also, evaluation of documents by CERHR (2002a, b), Doull and Rozman (2001), Rodricks (2002), Rozman and Doull (2002), SLR International (2001), and others.

[2] For purposes of this proposal, EPA is considering levels within the range of 17–30 ppm based on the following information on nPB's health effects for purposes of determining acceptability: estrous cycle length at 17 to 22 ppm, live litter size at 20 ppm, and sperm motility at 18 to 30 ppm from evaluation of the WIL 2001 Study "An Inhalation Two-Generation Reproductive Toxicity Study of 1-Bromopropane in Rats" and confirmed by comparison with other studies. Also, considers evaluation of documents by Stelljes and Wood (2004); TERA (2004); ICF, 2006a; ACGIH (2005); Rozman and Doull (2005); Stelljes (2005); and others.

X. How can I use nPB as safely as possible?

Below are actions that will help nPB users minimize exposure levels:

All end uses

- All users of nPB should wear appropriate personal protective equipment, including chemical goggles, flexible laminate protective gloves (e.g., Viton, Silvershield) and chemical-resistant clothing. Special care should be taken to avoid contact with the skin since nPB, like many halogenated solvents, can be absorbed through the skin. Refer to OSHA's standard for the selection and use of Personal Protective Equipment, 29 CFR 1910.132.
- Limit worker exposure to solvents to minimize any potential adverse health effects. Workers should avoid staying for long periods of time in areas near where they have been using the solvent. Where possible, shorten the period during each day when a worker is exposed. Where respiratory protection is necessary to limit worker exposures, respirators must be selected and used in accordance with OSHA's Respiratory Protection standard, 29 CFR 1910.134.
- Use less solvent, or use a different solvent, either alone or in a mixture with nPB.
- Follow all recommended safety precautions specified in the manufacturer's MSDS.
- Workers should receive safety training and education that includes potential health effects of exposure to nPB, covering information included on the appropriate MSDSs, as required by OSHA's Hazard Communication Standard (29 CFR 1910.1200).
- Request a confidential consultation from your State government on all aspects of occupational safety and health. You can contact the appropriate state agency that participates in OSHA's consultation program. These contacts are on OSHA's web site at *http://www.osha.gov/oshdir/consult.html.* For further information on OSHA's confidential consultancy program, visit OSHA's web page at *http://www.osha.gov/html/consultation.html.*
- Use the employee exposure monitoring programs and product stewardship programs where offered by manufacturers and formulators of nPB-based products.
- If the manufacturer or formulator of your nPB-based product does not have an exposure monitoring program, we recommend that you start your own exposure monitoring program, and/or request a confidential consultation from your State government. A medical monitoring program should be established for the early detection and prevention of acute and chronic effects of exposure to nPB. The workers' physician(s) should be given information about the adverse health effects of exposure to nPB and the workers' potential for exposure.

Spray applications

- For spray applications (e.g., aerosols), consider your available options, and if using nPB, use sufficient ventilation to reduce exposure to maintain acceptable exposure levels.
- For ventilation, we recommend that you follow the design guidelines for ventilation in ACGIH's *Industrial Ventilation: A Manual of Recommended Practice* (ACGIH, 2002). In particular, the guidelines in Chapter 10.75 are appropriate for spray booths, and the

guidelines in Chapter 10.35 are appropriate for laboratory hoods.

• The ACGIH Ventilation Manual recommends a minimum flow rate of 150 cubic feet per minute (cfm) for each sq-ft of opening for a small booth with at least 4 sq-ft of open face area. This equates to an average face velocity of 150 ft/min. For a large booth, the recommended face velocity is 100 ft/min for walk-in booths and 100 to 150 ft/min for a large spray booth where the operator works outside. In general, the opening should be kept as small as possible to accommodate the work-pieces, generally 12 inches wider and taller than the largest piece of work. If all spraying is not directed towards the back of the booth or the booth is too shallow for the size of the pieces being sprayed or if disruptive air currents are present at the face of the booth, a greater flow of air will be needed.

We note that these steps are useful for reducing exposure to any industrial solvent, and not just nPB.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the document ''Analysis of Economic Impacts of Proposed nPB Rule on Aerosols and Adhesives.'' A copy of the analysis is available in the docket for this action (Ref. EPA–HQ–OAR–2002–0064) and the analysis is briefly summarized here. EPA estimates the total costs of the proposed rule to between $38.6 and 46.4 million per year.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2224.01.

If the provisions of this proposed rule become final (i.e., if the proposed regulatory language at the end of this document is finalized), there would be no new information collection burden. This proposed rule contains no new requirements for reporting or recordkeeping. OMB has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226 (EPA ICR No. 1596.06). This ICR included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a SNAP/Toxic Substance Control Act (TSCA) Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses.

However, if EPA were to finalize the proposed alternate approach described in section VII.A of this preamble, users of nPB would have an information collection burden from exposure monitoring and recordkeeping. Under the proposed alternate approach, users of nPB would be required to monitor worker exposure initially and periodically (usually every 6 months) and keep records of these exposure data at the facility for at least three years from the date the samples were taken. This data is necessary to ensure that users of nPB are meeting the regulatory use conditions. If the data indicates that the use condition is not being met, it could be used by EPA or citizens in an enforcement action against the facility. These data would be considered available to the public and would not be considered confidential.

The estimated burden of recordkeeping for the entire regulated community under the proposed alternate approach is as much as $7.0 million and 13,170 hours per year. The estimated recordkeeping burden for a typical user is $96 and 0.18 hours per worker per monitoring event. We estimate approximately 1.9 monitoring events per year per worker, assuming that roughly 90% of exposed workers must be monitored every six months and 10% must be monitored once annually. We estimate that up to 35,000 workers would be monitored for exposure to nPB. Costs under the proposed alternate approach include the annual cost of purchasing passive organic exposure monitoring badges, the annual cost of services for analyzing the resulting exposure, and the annual cost of reviewing and filing the data up to 2 times per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2002–0064. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''*Attention:* Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 30, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by June 29, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. However, the RFA also authorizes an agency to use alternate definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternate definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternate small business definition, agencies must consult with SBA's Office of Advocacy.

EPA proposed an alternate definition for regulatory flexibility analyses under the RFA for rules related to the use of nPB as an alternative to ozone-depleting substances (ODS) in metals, precision, and electronics cleaning, adhesives, and aerosol solvents in the June 2003 NPRM (68 FR 33309, June 3, 2003). EPA established this final definition under section 601(3) of the RFA when we promulgated the final rule on the acceptable use of nPB in metals, precision, and electronics cleaning in the Rules and Regulations section of today's **Federal Register**. For purposes of assessing the economic impacts of this proposed rule on small entities, EPA defined ''small business'' as a small business with less than 500 employees, rather than use the individual SBA size standards for the numerous NAICS subsectors and codes. We believe that no small governments or small organizations are affected by this rule. EPA chose to use the alternate definition to simplify the economic analysis. This approach slightly reduced the number of small businesses included in our analysis and slightly increased the percentage of small businesses for whom the analysis indicated the use of nPB in accordance with this proposed rule may have an economically significant impact. Furthermore, this size standard was set by the Small Business Administration for all NAICS codes for businesses using nPB-based adhesives, one of the end uses that would be affected by this rule.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule proposes to list nPB as an unacceptable substitute for ODS in aerosols and adhesives. EPA has analyzed the economic impacts of switching from nPB to other alternative aerosol solvents or adhesives. EPA estimates that up to 3,380 small industrial end users currently use nPB in the end uses addressed by this proposed rule and thus could be subject to the regulatory impacts of this rule. This number includes approximately 3,100 users of nPB-based aerosol solvents, and 280 users of nPB-based adhesives. Considering the regulatory impacts on adhesive and aerosol users that must switch to other alternatives, we found that up to 258 (8%) of small businesses would experience impacts of 1% or greater of annual sales and no small businesses would experience impacts of 3% or greater of annual sales. Based on the relatively small number and low percentage of small businesses that would experience significant economic impacts, EPA concludes that this rule would not have a significant economic impact on a substantial number of small entities.

In the case of coatings uses, our understanding is that only a single facility, the Lake City Army Ammunition Plant, is currently using coatings with nPB as the carrier solvent, and this facility could continue to use nPB following its current practices. Therefore, we consider there to be no economic impact of this rule on coatings users and have not done further analysis for this end use.

Types of businesses that would be subject to this proposed rule include:

- Manufacturers of computers and electronic equipment that clean with nPB cleaning solvents (NAICS subsector 334).
- Manufacturers of appliances, electrical equipment, and components that require oil, grease, and solder flux to be cleaned off (NAICS subsection 335).
- Manufacturers of transportation equipment, such as aerospace equipment that requires cleaning either in a tank or with aerosols, or aircraft seating, which is assembled using adhesives containing nPB as a carrier solvent; and ship or boat builders applying adhesives with nPB (NAICS subsector 336).
- Manufacturers of furniture, including various kinds of furniture with cushions and countertops assembled using adhesives containing nPB as a carrier solvent (NAICS subsector 337).
- Foam fabricators, who assemble foam cushions or sponges using adhesives containing nPB as a carrier solvent (NAICS code 326150).

In order to consider the resources that affected small businesses have available to operate and to respond to the proposed regulatory requirements, EPA compared the cost of meeting the proposed regulatory requirements to small businesses' annual sales. In our analysis for this proposed rule, we used the average value of shipments for the products manufactured by the end user as a proxy for sales or revenues, since these data are readily available from the U.S. Department of Commerce. The following tables display the average value of shipments for different sizes of business and different NAICS subsectors or codes in the affected industrial sectors. EPA then used data from these sources to determine the potential economic impacts of this proposed rule on small businesses.

TABLE 15.—AVERAGE VALUE OF SHIPMENTS IN NAICS SUBSECTORS USING AEROSOL SOLVENTS, BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average value of shipments per business ($) by NAICS subsector code		
	334, computer and electronic products	335, electrical equipment, appliance, and component mfg	336, transportation equipment
1 to 4 employees	345,007	315,772	412,460
5 to 9 employees	1,317,238	1,243,065	1,414,384
10 to 19 employees	2,566,913	2,483,327	2,573,352

TABLE 15.—AVERAGE VALUE OF SHIPMENTS IN NAICS SUBSECTORS USING AEROSOL SOLVENTS, BY NUMBER OF EMPLOYEES AT BUSINESS—Continued

Number of employees at business	Average value of shipments per business ($) by NAICS subsector code		
	334, computer and electronic products	335, electrical equipment, appliance, and component mfg	336, transportation equipment
20 to 49 employees	5,672,245	5,389,945	5,738,739
50 to 99 employees	12,951,836	12,650,236	12,735,583
100 to 249 employees	31,258,875	31,290,638	34,256,544
250 to 499 employees	84,270,454	77,279,974	86,911,454
Avg. value ship small businesses in sub-sector	8,261,788	9,539,205	11,029,561
Avg. value ship all businesses in subsector	20,810,094	13,417,905	45,029,773
Avg. value shipments subset small businesses using nPB	11,246,045	12,066,562	13,422,547

TABLE 16.—AVERAGE VALUE OF SHIPMENTS IN NAICS CATEGORIESUSING nPB AS A CARRIER SOLVENT IN ADHESIVES, BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average value of shipments per small business ($) by NAICS sub sector				
	337121, upholstered household furniture	337110, wood kitchen cabinet and counter tops	326150, urethane and other foam products (except polystyrene)	336360, motor vehicle seating and interior trim	337124, metal household furniture
1 to 4 employees	234,345	156,833	496,318	425,863	187,950
5 to 9 employees	963,021	622,744	1,305,183	1,728,132	903,393
10 to 19 employees	1,771,416	1,141,119	3,152,283	3,082,486	1,431,480
20 to 49 employees	3,653,623	2,619,197	6,615,331	5,508,370	3,538,684
50 to 99 employees	8,089,968	7,386,365	13,281,000	14,088,500	7,547,536
100 to 249 employees	17,502,175	17,151,091	31,524,872	44,310,286	19,821,719
250 to 499 employees	40,250,813	55,982,674	64,119,800	123,803,610	d(1)
Avg. Small Businesses in Sub sector	3,588,297	1,150,768	10,472,992	12,542,725	3,141,720
Avg. ALL Businesses in Sub sector	5,490,101	1,475,602	11,110,822	44,808,573	5,239,747
Avg. Subset Small Businesses using nPB	11,519,540	5,999,622	18,950,068	12,019,847	20,401,301

(1) "d" designates "Data withheld to avoid disclosing data of individual companies; data are included in higher level totals." The average value of shipments for businesses estimates those values marked with "d," and thus may be overestimated or underestimated.

This proposed rule would list nPB as unacceptable for use in adhesives and aerosols. The available alternatives identified include adhesive formulations based on water, methylene chloride, or flammable solvents such as acetone and aerosol formulations of flammable solvents, combustible solvents, blends of trans-dichloroethylene and HFEs or HFCs, and HCFC–225ca/cb. We considered various aspects of the cost of switching to other alternatives, including the cost of meeting OSHA requirements and the cost of the alternative adhesive. We specifically request public comment on the assumptions and costs used in EPA's analysis (US EPA, 2007).

We estimate that up to 9 small businesses using nPB-based adhesives, or roughly 3% of the 280 or so small businesses that use nPB-based adhesives, would experience a cost increase (i.e., an impact) of greater than 1.0% of annual sales, and no small businesses would experience an impact of greater than 3% of annual sales if this proposed rule became final. For small businesses using nPB-based aerosols, we estimate that approximately 249 would experience a cost increase of greater than 1.0% of annual sales. This equates to roughly 8% of the 3100 or so small businesses currently using nPB-based aerosol solvents. No small businesses using aerosols would experience an impact of greater than 3% of annual sales. Approximately eight percent of all 3380 or so small businesses choosing to use nPB in these end uses would experience an impact of greater than 1.0% of annual sales and no small businesses would experience an impact of greater than 3.0% of annual sales. Because of the small total number and small percentage of affected businesses that would experience an impact of greater than either 1.0% or 3.0% of annual sales, EPA does not consider this proposed rule to have a significant economic impact on a substantial number of small businesses.

We also analyzed the potential small business impacts of the proposed alternate approach. Under the proposed alternate approach, users would have to: (1) Meet an exposure level of 20 ppm on an eight-hour time-weighted average, (2) monitor workers' exposure to nPB using a personal breathing zone sampler on an eight-hour time-weighted average initially and periodically (every 6 months or longer, depending on the concentration during initial monitoring), and (3) keep records of the worker exposure data on site at the facility for at least three years from the date of the measurement. We assume that the cost of following the proposed alternate approach is the cost of installing ventilation for aerosols and adhesives or emission controls for solvent cleaning, the cost of using personal protective equipment, and the cost of monitoring worker exposure. Approximately 67 to 387 aerosol solvent users (2 to 13 percent), 25 to 54 adhesive users (9 to 19 percent), and 2.6 to 12.6 percent of all 3380 or so small businesses would experience impacts of greater than 1% of annual sales if they chose to use nPB subject to the proposed use conditions rather than switching to another ODS substitute.

Four to nine users of nPB-based adhesives, or less than 1% of all small businesses affected by this proposal, would experience impacts of 3% or greater of annual sales under the proposed alternate approach. Based on this analysis, the proposed alternate approach would not create a significant adverse economic impact on a substantial number of small entities.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities if it became final, EPA nonetheless has tried to reduce the impact of this rule on small entities. Before selecting preferred the regulatory option in this proposed rule, we considered a number of regulatory options, such as:

- Placing a narrowed use limit on the use of nPB in adhesives and aerosols that would allow its use only in those cases where alternatives are technically infeasible due to performance or safety issues. This would have required testing, recordkeeping, and some installation of capital equipment.
- Requiring that when nPB is used in adhesives or aerosols, it must be used with local ventilation equipment and personal protective equipment. This would have required further installation of capital equipment, without necessarily protecting workers as thoroughly as a required acceptable exposure limit or requiring a switch to another alternative.
- Prohibiting the use of nPB in all end uses.
- Retaining the previously proposed requirement for a limit on iPB content in nPB formulations.

The costs of a number of these options are included in EPA's analysis (US EPA, 2006; U.S. EPA, 2007).

In developing our regulatory options, we considered information we learned from contacting small businesses using or selling nPB. EPA staff visited the site of a small business using nPB for cleaning electronics. We contacted several fabricators of foam cushions that have used adhesives containing nPB. We participated in meetings with a number of adhesive manufacturers and users of adhesives in furniture construction. We developed a fact sheet and updated our program Web site to inform small businesses about the proposed rule and to request their comments.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect a number of end users in manufacturing. The estimated cost of the proposed requirements for the private sector is approximately $38.6 to 46.4 million per year, and the proposed alternate approach would cost the private sector approximately $ 42.3 to 67.5 million per year. Therefore, the impact of this rule on the private sector is less than $100 million per year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the

Federal government and Indian tribes, as specified in Executive Order 13175.

This proposed rule would not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The exposure limits and acceptability listings in this proposed rule apply to the workplace. These are areas where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to nPB.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturing of various metal, electronic, medical, and optical products cleaned with solvents containing nPB and products made with adhesives containing nPB. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, 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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. We note that the American Conference of Governmental Industrial Hygienists (ACGIH), although it sets voluntary standards, is not a voluntary consensus standards body. Therefore, use of an acceptable exposure limit from the ACGIH is not subject to the NTTAA.

XII. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section I.B.1 at the beginning of this document. Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket # EPA–HQ–OAR–2002–0064. Some specific items are available only in hard copy in dockets A–2001–07 or A–92–42 (legacy docket numbers for SNAP nPB rule and for SNAP program and submissions). Numbers listed after the reference indicate the docket and item numbers.

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 15, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671—7671q.

2. Subpart G is amended by adding Appendix S to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix S to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

Listed in the May 30, 2007 final rule.

AEROSOLS—UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Further information
Aerosol solvents	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Unacceptable	EPA finds unacceptable risks to human health in this end use compared to other available alternatives. nPB, also known as 1-bromopropane, is Number 106–94–5 in the CAS Registry.

ADHESIVES, COATINGS, AND INKS—SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use conditions	Further information
Coatings	n-propyl bromide (nPB) as a substitute for methyl chloroform, CFC–113, and HCFC–141b.	Acceptable subject to use conditions.	Use is limited to coatings at facilities that, as of May 30, 2007, have provided EPA information demonstrating acceptable workplace exposures.	EPA recommends the use of personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. EPA expects that all users of nPB would comply with any final Permissible Exposure Limit that the Occupational Safety and Health Administration issues in the future under 42 U.S.C. 7610(a). nPB, also known as 1-brompropane, is Number 106–94–5 in the CAS Registry.

As of May 30, 2007, the Lake City Army Ammunition Plant is the only facility using nPB in coatings that has provided information to EPA that meets this condition.

ADHESIVES, COATINGS, AND INKS—UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Further information
Adhesives	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Unacceptable	EPA finds unacceptable risks to human health in this end use compared to other available alternatives. nPB, also known as 1-bromopropane, is Number 106–94–5 in the CAS Registry.

[FR Doc. E7–9706 Filed 5–29–07; 8:45 am]
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Federal Register

Wednesday,
May 30, 2007

Part IV

Department of Justice

The National Guidelines for Sex Offender Registration and Notification; Notice

DEPARTMENT OF JUSTICE

[Docket No. OAG 121; A.G. Order No. 2880–2007].

RIN 1105–AB28

Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification

AGENCY: Department of Justice.

ACTION: Notice; Proposed guidelines.

SUMMARY: The United States Department of Justice is publishing Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act.

DATES: Comments must be received by August 1, 2007.

ADDRESSES: Comments may be mailed to Laura L. Rogers, Director, SMART Office, Office of Justice Programs, United States Department of Justice, 810 7th Street NW., Washington, DC 20531. To ensure proper handling, please reference OAG Docket No. 121 on your correspondence. You may view an electronic version of these proposed guidelines at *http://www.ojp.gov/smart* or *http://www.regulations.gov.* You may also comment via the Internet to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) of the Justice Department's Office of Justice Programs at *getsmart@usdoj.gov.* Electronically submitted comments must include Docket No. OAG 121 in the subject box.

FOR FURTHER INFORMATION CONTACT: Laura L. Rogers, Director, SMART Office, Office of Justice Programs, United States Department of Justice, Washington, DC 202–514–4689.

SUPPLEMENTARY INFORMATION: Since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071) in 1994, there have been national standards for sex offender registration and notification in the United States. All states currently have sex offender registration and notification programs and have endeavored to implement the Wetterling Act standards in their existing programs.

Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248), the Sex Offender Registration and Notification Act (SORNA), contains a comprehensive revision of the national standards for sex offender registration and notification. The SORNA reforms are generally designed to strengthen and increase the effectiveness of sex offender registration and notification for the protection of the public, and to eliminate potential gaps and loopholes under the pre-existing standards by means of which sex offenders could attempt to evade registration requirements or the consequences of registration violations.

These proposed guidelines carry out a statutory directive to the Attorney General in section 112(b) of SORNA (42 U.S.C. 16912(b)) to issue guidelines to interpret and implement SORNA. They provide guidance and assistance to the states and other jurisdictions in incorporating the SORNA requirements into their sex offender registration and notification programs. Matters addressed in the guidelines include general principles for SORNA implementation; the jurisdictions responsible for implementing the SORNA standards in their programs; the sex offenders required to register under SORNA and the registration and notification requirements they are subject to based on the nature of their offenses and the extent of their recidivism; the information to be included in the sex offender registries and the disclosure and sharing of such information; the jurisdictions in which sex offenders are required to register; the procedures for initially registering sex offenders and for keeping the registration current and the registration information up to date; the duration of registration; and the means of enforcing registration requirements.

Proposed National Guidelines for Sex Offender Registration and Notification

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I. Introduction

The Sex Offender Registration and Notification Act (''SORNA'' or ''the Act''), which is title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248), provides a new comprehensive set of minimum standards for sex offender registration and notification in the United States. These guidelines are issued to provide guidance and assistance to covered jurisdictions—the 50 States, the District of Columbia, the principal U.S. territories, and Indian tribal governments—in implementing the SORNA standards in their registration and notification programs.

The adoption of these guidelines carries out a statutory directive to the Attorney General, appearing in SORNA section 112(b), to issue guidelines to interpret and implement SORNA. Other provisions of SORNA establish the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the ''SMART Office''), a component of the Office of Justice Programs of the U.S. Department of Justice. The SMART Office is authorized by law to administer the standards for sex offender registration and notification that are set forth in SORNA and interpreted and implemented in these guidelines. It is further authorized to cooperate with and provide assistance to States, local governments, tribal governments, and other public and private entities in relation to sex offender registration and notification and other measures for the protection of the public from sexual abuse or exploitation. See SORNA section 146(c). Accordingly, the SMART Office should be regarded by jurisdictions discharging registration and notification functions as their key partner and resource in the federal government in further developing and strengthening their sex offender registration and notification programs, and the SMART Office will provide all possible assistance for this purpose.

The development of sex offender registration and notification programs in the United States has proceeded rapidly since the early 1990s, and at the present time such programs exist in all of the States, the District of Columbia, and some of the territories and tribes. These programs serve a number of important public safety purposes. In their most basic character, the registration aspects of these programs are systems for

tracking sex offenders following their release into the community. If a sexually violent crime occurs or a child is molested, information available to law enforcement through the registration program about sex offenders who may have been present in the area may help to identify the perpetrator and solve the crime. If a particular released sex offender is implicated in such a crime, knowledge of the sex offender's whereabouts through the registration system may help law enforcement in making a prompt apprehension. The registration program may also have salutary effects in relation to the likelihood of registrants committing more sex offenses. Registered sex offenders will perceive that the authorities' knowledge of their identities, locations, and past offenses reduces the chances that they can avoid detection and apprehension if they reoffend, and this perception may help to discourage them from doing so.

Registration also provides the informational base for the other key aspect of the programs—notification—which involves making information about released sex offenders more broadly available to the public. The means of public notification currently include sex offender Web sites in all States, the District of Columbia, and some territories, and may involve other forms of notice as well. The availability of such information helps members of the public to take common sense measures for the protection of themselves and their families, such as declining the offer of a convicted child molester to watch their children or head a youth group, or reporting to the authorities approaches to children or other suspicious activities by such a sex offender. Here as well, the effect is salutary in relation to the sex offenders themselves, since knowledge by those around them of their sex offense histories reduces the likelihood that they will be presented with opportunities to reoffend.

While sex offender registration and notification in the United States are generally carried out through programs operated by the individual States and other non-federal jurisdictions, their effectiveness depends on also having effective arrangements for tracking of registrants as they move among jurisdictions and some national baseline of registration and notification standards. In a federal union like the United States with a mobile population, sex offender registration could not be effective if registered sex offenders could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to a nearby jurisdiction that required little or nothing in terms of registration and notification.

Hence, there have been national standards for sex offender registration in the United States since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (42 U.S.C. 14071) in 1994. The national standards from their inception have addressed such matters as the offenses for which registration should be required, updating and periodic verification of registration information, the duration of registration, public notification, and continued registration and tracking of sex offenders when they relocate from one jurisdiction to another.

Following the enactment of the Wetterling Act in 1994, that Act was amended a number of times, in part reflecting and in part promoting trends in the development of the State registration and notification programs. Ultimately, Congress concluded that the patchwork of standards that had resulted from piecemeal amendments should be replaced with a comprehensive new set of standards—the SORNA reforms, whose implementation these Guidelines concern—that would close potential gaps and loopholes under the old law, and generally strengthen the nationwide network of sex offender registration and notification programs. Important areas of reform under the SORNA standards include:

- Extending the jurisdictions in which registration is required beyond the 50 States, the District of Columbia, and the principal U.S. territories, to include Indian tribal jurisdictions.
- Extending the classes of sex offenders and sex offenses for which registration is required.
- Consistently requiring that sex offenders in the covered classes register and keep the registration current in the jurisdictions in which they reside, work, or go to school.
- Requiring more extensive registration information.
- Adding to the national standards periodic in-person appearances by registrants to verify and update the registration information.
- Broadening the availability of information concerning registered sex offenders to the public, through posting on sex offender Web sites and by other means.
- Adopting reforms affecting the required duration of registration.

In addition, SORNA strengthens the federal superstructure elements that leverage and support the sex offender registration and notification programs of the registration jurisdictions. These strengthened elements are: (i) Stepped-up federal investigation and prosecution efforts to assist jurisdictions in enforcing sex offender registration requirements; (ii) new statutory provisions for the national database and national Web site (i.e., the National Sex Offender Registry and the Dru Sjodin National Sex Offender Public Web site) that effectively compile information obtained under the registration programs of the States and other jurisdictions and make it readily available to law enforcement or the public on a nationwide basis; (iii) development by the federal government of software tools, which the States and other registration jurisdictions will be able to use to facilitate the operation of their registration and notification programs in conformity with the SORNA standards; and (iv) establishment of the SMART Office to administer the national standards for sex offender registration and notification and to assist registration jurisdictions in their implementation.

Through the cooperative effort of the 50 States, the District of Columbia, the U.S. territories, and Indian tribal governments with the responsible federal agencies, the SORNA goal of an effective and comprehensive national system of registration and notification programs can be realized, with great benefit to the ultimate objective of ''protect[ing] the public from sex offenders and offenders against children.'' SORNA section102. These Guidelines provide the blueprint for that effort.

Alberto R. Gonzales, Attorney General

II. General Principles

Before turning to the specific SORNA standards and requirements discussed in the remainder of these Guidelines, certain general points should be noted concerning the interpretation and application of the Act and these Guidelines:

A. Terminology

These Guidelines use key terms with the meanings defined in SORNA. In particular, the term ''jurisdiction'' is consistently used with the meaning set forth in SORNA section 111(10). As defined in that provision, it refers to the 50 States, the District of Columbia, the five principal U.S. territories—i.e., the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana

Islands, and the United States Virgin Islands—and Indian tribes that elect to function as registration jurisdictions under SORNA section 127. (For more concerning covered jurisdictions, see Part III of these Guidelines.) Thus, when these Guidelines refer to ''jurisdictions'' implementing the SORNA registration and notification requirements, the reference is to implementation of these requirements by the jurisdictions specified in SORNA section 111(10). Likewise, the term ''sex offense'' is not used to refer to any and all crimes of a sexual nature, but rather to those covered by the definition of ''sex offense'' appearing in SORNA section 111(5), and the term ''sex offender'' has the meaning stated in SORNA section 111(1). (For more concerning covered sex offenses and offenders, see Part IV of these Guidelines.)

SORNA itself includes a number of references relating to implementation by jurisdictions of the requirements of ''this title.'' Section 125 provides a mandatory 10% reduction in certain federal justice assistance funding for jurisdictions that fail, as determined by the Attorney General, to substantially implement ''this title'' within the time frame specified in section 124, and section 126 authorizes a Sex Offender Management Assistance grant program to help offset the costs of implementing ''this title.'' In the context of these provisions, the references to ''this title'' function as a shorthand for the SORNA sex offender registration and notification standards. They do not mean that funding under these provisions is affected by a jurisdiction's implementation or non-implementation of reforms unrelated to sex offender registration and notification that appear in later portions of title I of the Adam Walsh Act Child Protection and Safety Act of 2006 (particularly, subtitle C of that title).

Section 125(d) of SORNA states that the provisions of SORNA ''that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.'' Statements in these Guidelines that SORNA requires jurisdictions to adopt certain measures should be understood accordingly in their application to the States. Since the SORNA requirements relating to sex offender registration and notification are, in relation to the States, only partial funding eligibility conditions, creation of these requirements is within the constitutional authority of the federal government.

B. Minimum National Standards

SORNA establishes a national baseline for sex offender registration and notification programs. In other words, the Act generally constitutes a set of minimum national standards and sets a floor, not a ceiling, for jurisdictions' programs. Hence, for example, a jurisdiction may have a system that requires registration by broader classes of convicted sex offenders than those identified in SORNA, or that requires, in addition, registration by certain classes of non-convicts (such as persons acquitted on the ground of insanity of sexually violent crimes or child molestation offenses, or persons released following civil commitment as sexually dangerous persons). A jurisdiction may require verification of the registered address or other registration information by sex offenders with greater frequency than SORNA requires, or by other means in addition to those required by SORNA (e.g., through the use of mailed address verification forms, in addition to in-person appearances). A jurisdiction may require sex offenders to register for longer periods than those required by the SORNA standards. A jurisdiction may require that changes in registration information be reported by registrants on a more stringent basis than the SORNA minimum standards—e.g., requiring that changes of residence be reported before the sex offender moves, rather than within three business days following the move. A jurisdiction may extend Web site posting to broader classes of registrants than SORNA requires and may post more information concerning registrants than SORNA and these Guidelines require.

Such measures, which encompass the SORNA baseline of sex offender registration and notification requirements but go beyond them, generally have no negative implication concerning jurisdictions' implementation of or compliance with SORNA. This is so because the general purpose of SORNA is to protect the public from sex offenders and offenders against children through effective sex offender registration and notification, and it is not intended to preclude or limit jurisdictions' discretion to adopt more extensive or additional registration and notification requirements to that end. There are exceptions to this general rule, however. For example, SORNA section 118(b) requires that certain limited types of information, such as victim identity and registrants' Social Security numbers, be excluded from jurisdictions' publicly accessible sex offender Web sites, as discussed in Part VII of these Guidelines. In most other respects, jurisdictions' discretion to go further than the SORNA minimum is not limited.

C. Retroactivity

The applicability of the SORNA requirements is not limited to sex offenders whose predicate sex offense convictions occur following a jurisdiction's implementation of a conforming registration program. Rather, SORNA's requirements apply to all sex offenders, including those whose convictions predate the enactment of the Act. The Attorney General has so provided in 28 CFR part 72, pursuant to the authority under SORNA section 113(d) to ''specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of this Act or its implementation in a particular jurisdiction.'' As noted in the rulemaking document for the cited regulations, the application of the SORNA standards to sex offenders whose convictions predate SORNA creates no ex post facto problem ''because the SORNA sex offender registration and notification requirements are intended to be non-punitive, regulatory measures adopted for public safety purposes, and hence may validly be applied (and enforced by criminal sanctions) against sex offenders whose predicate convictions occurred prior to the creation of these requirements. See *Smith* v. *Doe,* 538 U.S. 84 (2003).'' 72 FR 8894, 8896 (Feb. 28, 2007).

As a practical matter, jurisdictions may not be able to identify all sex offenders who fall within the SORNA registration categories, where the predicate convictions predate the enactment of SORNA or the jurisdiction's implementation of the SORNA standards in its registration program, particularly where such sex offenders have left the justice system and merged into the general population long ago. But many sex offenders with such convictions will remain in (or reenter) the system because:

- They are incarcerated or under supervision, either for the predicate sex offense or for some other crime;
- They are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or
- They hereafter reenter the jurisdiction's justice system because of conviction for some other crime (whether or not a sex offense).

Sex offenders in these three classes are within the cognizance of the

jurisdiction, and the jurisdiction will often have independent reasons to review their criminal histories for penal, correctional, or registration/notification purposes. Accordingly, a jurisdiction will be deemed to have substantially implemented the SORNA standards with respect to sex offenders whose predicate convictions predate the enactment of SORNA or the implementation of SORNA in the jurisdiction's program if it registers these sex offenders, when they fall within any of the three classes described above, in conformity with the SORNA standards. (For more about the registration of sex offenders in these classes, see the discussion under ''retroactive classes'' in Part IX of these Guidelines.)

The required retroactive application of the SORNA requirements will also be limited in some cases by the limits on the required duration of registration. As discussed in Part XII of these Guidelines, SORNA requires minimum registration periods of varying length for sex offenders in different categories, defined by criteria relating to the nature of their sex offenses and their history of recidivism. This means that a sex offender with a pre-SORNA conviction may have been in the community for a greater amount of time than the registration period required by SORNA. For example, SORNA section 115 requires registration for 25 years for a sex offender whose offense satisfies the ''tier II'' criteria of section 111(3). A sex offender who was released from imprisonment for such an offense in 1980 is already more than 25 years out from the time of release. In such cases, a jurisdiction may credit the sex offender with the time elapsed from his or her release (or the time elapsed from sentencing, in case of a non-incarcerative sentence), and does not have to require the sex offender to register on the basis of the conviction, even if the criteria for retroactive application of the SORNA standards under this Part are otherwise satisfied.

As with other requirements under SORNA and these Guidelines, the foregoing discussion identifies only the minimum required for SORNA compliance. Jurisdictions are free to require registration for broader classes of sex offenders with convictions that predate SORNA or the jurisdiction's implementation of the SORNA standards in its program.

D. Automation—Electronic Databases and Software

Several features of SORNA contemplate, or will require as a practical matter, the use of current electronic and cyber technology to track seamlessly sex offenders who move from one jurisdiction to another, ensure that information concerning registrants is immediately made available to all interested jurisdictions, and make information concerning sex offenders immediately available to the public as appropriate. These include provisions for immediate information sharing among jurisdictions under SORNA section 113(c); a requirement in section 119(b) that the Attorney General ensure ''that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions''; and requirements in section 121(b) that sex offender registration information and updates thereto be provided immediately to various public and private entities and individuals. (For more about these information sharing requirements and associated time frames, see Parts VII.B and X of these Guidelines.)

Carrying out the SORNA information sharing requirements accordingly will entail maintenance by jurisdictions of their registries in the form of electronic databases, whose included information can be electronically transmitted to other jurisdictions and entities. This point is further discussed in connection with the specific SORNA standards, particularly in Parts VI, VII, and X of these Guidelines.

Section 123 of SORNA directs the Attorney General, in consultation with the jurisdictions, to develop and support registry management and Web site software. The purposes of the software include facilitating the immediate exchange of sex offender information among jurisdictions, public access through the Internet to sex offender information and other forms of community notification, and compliance in other respects with the SORNA requirements. As required by section 123, the Department of Justice will develop and make available to the jurisdictions software tools for the operation of their sex offender registration and notification programs, which will, as far as possible, be designed to automate these processes and enable the jurisdictions to implement SORNA's requirements by utilizing the software.

E. Implementation

Section 124 of SORNA sets a general time frame of three years for implementation, running from the date of enactment of SORNA, i.e., from July 27, 2006. The Attorney General is authorized to provide up to two one-year extensions of this deadline. Failure to comply within the applicable time frame would result in a 10% reduction of Federal justice assistance funding under 42 U.S.C. 3750 *et seq.* (''Byrne Justice Assistance Grant'' funding). See SORNA section 125(a). Funding withheld from jurisdictions because of noncompliance would be reallocated to other jurisdictions that are in compliance, or could be reallocated to the noncompliant jurisdiction to be used solely for the purpose of SORNA implementation.

While SORNA sets minimum standards for jurisdictions' registration and notification programs, it does not require that its standards be implemented by statute. Hence, in assessing compliance with SORNA, the totality of a jurisdiction's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

The SMART Office will be responsible for determining whether a jurisdiction has substantially implemented the SORNA requirements. The affected jurisdictions are encouraged to submit information to the SMART Office concerning existing and proposed sex offender registration and notification provisions with as much lead time as possible, so the SMART Office can assess the adequacy of existing or proposed measures to implement the SORNA requirements and work with the submitting jurisdictions to overcome any shortfalls or problems. At the latest, submissions establishing compliance with the SORNA requirements should be made to the SMART Office at least three months before the deadline date of July 27, 2009—i.e., by April 27, 2009—so that the matter can be determined before the Byrne Grant funding reduction required by SORNA section 125 for noncompliant jurisdictions takes effect. If it is anticipated that a submitting jurisdiction may need an extension of time as described in SORNA section 124(b), the submission to the SMART Office—which should be made by April 27, 2009, as noted—should include a description of the jurisdiction's implementation efforts and an explanation why an extension is needed.

SORNA section 125 refers to ''substantial'' implementation of SORNA. The standard of ''substantial implementation'' is satisfied with respect to an element of the SORNA requirements if a jurisdiction carries out the requirements of SORNA as interpreted and explained in these Guidelines. Hence, the standard is satisfied if a jurisdiction implements

measures that these Guidelines identify as sufficient to implement (or ''substantially'' implement) the SORNA requirements.

The ''substantial'' compliance standard also contemplates that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines. For example, section 116 of SORNA requires periodic in-person appearances by sex offenders to verify their registration information. In some cases this will be impossible, such as the case of a sex offender who is hospitalized and unconscious as a result of an injury at the time of a scheduled appearance. In other cases, the appearance may not be literally impossible, but there may be reasons to allow some relaxation of the requirement. For example, a sex offender may unexpectedly need to deal with a family emergency at the time of a scheduled appearance, where failure to make the appearance will mean not verifying the registration information within the exact time frame specified by SORNA section 116. A jurisdiction may wish to authorize rescheduling of the appearance in such cases. Doing so would not necessarily undermine substantially the objectives of the SORNA verification requirements, so long as the jurisdiction's rules or procedures require that the sex offender notify the official responsible for monitoring the sex offender of the difficulty, and that the appearance promptly be carried out once the interfering circumstance is resolved.

In general, the SMART Office will consider on a case-by-case basis whether jurisdictions' rules or procedures that do not exactly follow the provisions of SORNA or these Guidelines ''substantially'' implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement. If a jurisdiction is relying on the authorization to approve measures that ''substantially'' implement SORNA as the basis for an element or elements in its system that depart in some respect from the exact requirements of SORNA or these Guidelines, the jurisdiction's submission to the SMART Office should identify these elements and explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA.

Beyond the general standard of substantial implementation, SORNA section 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction's constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides. If it is not possible to overcome the problem, then the SMART Office may approve the jurisdiction's adoption of reasonable alternative measures that are consistent with the purposes of SORNA.

Section 125 of SORNA, as discussed above, provides for a funding reduction for jurisdictions that do not substantially implement SORNA within the applicable time frame. Section 126 of SORNA authorizes positive funding assistance—the Sex Offender Management Assistance (''SOMA'') grant program—to all registration jurisdictions to help offset the costs of SORNA implementation, with enhanced payments authorized for jurisdictions that effect such implementation within one or two years of SORNA's enactment. Congress has not appropriated funding for the SOMA program at the time of the issuance of these Guidelines. If funding for this program is forthcoming in the future, additional guidance will be provided concerning application for grants under the program.

III. Covered Jurisdictions

Section 112(a) of SORNA states that ''[e]ach jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title,'' and section 124 provides specific deadlines for ''jurisdictions'' to carry out the SORNA implementation. Related definitions appear in section 111(9) and (10). Section 111(9) provides that ''sex offender registry'' means a registry of sex offenders and a notification program.

Section 111(10) provides that ''jurisdiction'' refers to:

- The 50 States;
- The District of Columbia;
- The five principal U.S. territories—the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands; and
- Indian tribes to the extent provided in section 127.

Some of the provisions in SORNA are formulated as directions to sex offenders, including those appearing in sections 113(a)–(b), 113(c) (first sentence), 114(a), 115(a), and 116. Other SORNA provisions are cast as directions to jurisdictions or their officials, such as those appearing in sections 113(c) (second sentence), 113(e), 114(b), 117(a), 118, 121(b), and 122. To meet the requirement under sections 112 and 124 that covered jurisdictions must implement SORNA in their registration and notification programs, each jurisdiction must incorporate in the laws and rules governing its registration and notification program the requirements that SORNA imposes on sex offenders, as well as those that are addressed directly to jurisdictions and their officials.

While the ''jurisdictions'' assigned sex offender registration and notification responsibilities by SORNA are the 50 States, the District of Columbia, the principal territories, and Indian tribes (to the extent provided in section 127), as described above, this does not limit the ability of these jurisdictions to carry out these functions through their political subdivisions. For example, a jurisdiction may assign responsibility for initially registering sex offenders upon their release from imprisonment to correctional personnel who are employees of the jurisdiction's government, but the responsibility for continued tracking and registration of sex offenders thereafter may be assigned to personnel of local police departments, sheriffs' offices, or supervision agencies who are municipal employees. Moreover, in carrying out their registration and notification functions, jurisdictions are free to utilize (and to allow their agencies and political subdivisions to utilize) entities and individuals who may not be governmental agencies or employees in a narrow sense, such as contractors, volunteers, and community-based organizations that are capable of discharging these functions. SORNA does not limit jurisdictions' discretion concerning such matters. Rather, so long as a jurisdiction's laws and rules provide consistently for the discharge of the required registration and notification functions by some responsible individuals or entities, the specifics concerning such assignments of responsibility are matters within the jurisdiction's discretion. References in these Guidelines should be understood accordingly, so that (for example) a reference to an ''official'' carrying out a registration function does not mean that the function must be carried out by a government employee, but rather is simply a way of referring to whatever individual is assigned responsibility for the function.

With respect to Indian tribes, SORNA recognizes that tribes may vary in their capacities and preferences regarding the discharge of sex offender registration

and notification functions, and accordingly section 127 of SORNA has special provisions governing the treatment of Indian tribes as registration jurisdictions or the delegation of registration and notification functions to the States. Specifically, section 127(a)(1) generally affords federally recognized Indian tribes a choice between electing to carry out the sex offender registration and notification functions specified in SORNA in relation to sex offenders subject to its jurisdiction, or delegating those functions to a State or States within which the tribe is located. (Delegation to the State or States is automatic for a tribe subject to state law enforcement jurisdiction under 18 U.S.C. 1162, however—see the discussion of section 127(a)(2) below.) The choice by a tribe whether to become a SORNA registration jurisdiction or to delegate registration and notification functions to a State or States must be made within one year of SORNA's enactment on July 27, 2006.

If a tribe elects to become a SORNA registration jurisdiction, its functions and responsibilities regarding sex offender registration and notification are the same as those of a State. Duplication of registration and notification functions by tribes and States is not required, however, and such tribes may enter into cooperative agreements with the States for the discharge of these functions, as discussed below in connection with section 127(b). If a tribe elects to delegate to a State, then the State is fully responsible for carrying out the SORNA registration and notification functions, and the delegation includes an undertaking by the tribe to ''provide access to its territory and such other cooperation and assistance as may be needed to enable [the State] to carry out and enforce the requirements of [SORNA].'' SORNA section 127(a)(1)(B).

The election to become a SORNA registration jurisdiction, or to delegate to a State or States, must be made by resolution or other enactment of the tribal council or comparable governmental body. Hence, the decision must be made by a tribal governmental entity—''the tribal council or comparable governmental body''—that has the legal authority to make binding legislative decisions for the tribe. The tribal government should promptly notify the SMART Office of its decision and forward the text of the resolution or other enactment to the SMART Office by a reliable means of transmission—preferably by the decision deadline of July 27, 2007, or if that is not feasible, as soon thereafter as possible.

To satisfy the requirements of SORNA section 127(a)(1), the resolution or enactment must be adopted on or prior to July 27, 2007, and must state a decision by the tribal council (or comparable governmental body) to do one of the following:

- Carry out the SORNA requirements relating to sex offender registration and notification as a jurisdiction subject to those requirements; or
- Delegate the tribe's functions relating to sex offender registration and notification under SORNA to the State or States within which the territory of the tribe is located and provide access to its territory and such other cooperation and assistance as may be needed to enable the State or States to carry out and enforce the SORNA requirements.

Additional suggested elements for inclusion in the tribal resolution (or other enactment) include the following:

- Authorization of an appropriate tribal official or officials to negotiate or enter into cooperative agreements with state or local governments, if the tribe elects to become a SORNA registration jurisdiction, and if it is expected that the SORNA requirements will be carried out wholly or in part through such agreements.
- A direction to tribal officials and agencies to provide such cooperation and assistance as the State or States may need to carry out and enforce the SORNA requirements, if the tribe elects to delegate the SORNA functions to a State or States.
- A date or timing notation that shows the resolution was adopted on or prior to July 27, 2007.
- A direction that the SMART Office of the U.S. Department of Justice be notified of the tribe's election and that the resolution or enactment be transmitted to the SMART Office.

Subsection (a)(2) of SORNA section 127 specifies three circumstances in which registration and notification functions are deemed to be delegated to the State or States in which a tribe is located, even if the tribe does not make an affirmative decision to delegate:

- Under subparagraph (A) of subsection (a)(2), these functions are always delegated to the State if the tribe is subject to the law enforcement jurisdiction of the State under 18 U.S.C. 1162. (If a tribe's land is in part subject to state law enforcement jurisdiction under 18 U.S.C. 1162 and in part outside of the areas subject to 18 U.S.C. 1162, then: (i) Sex offender registration and notification functions are automatically delegated to the relevant State in the portion of the tribal land subject to 18 U.S.C. 1162, and (ii) the tribe has a choice between functioning as a registration jurisdiction or delegating registration and notification functions to the State in the portion of its land that is not subject to 18 U.S.C. 1162.)
- Under subparagraph (B) of subsection (a)(2), these functions are delegated to the State or States if the tribe does not make an affirmative election to function as a registration jurisdiction within one year of the enactment of SORNA—i.e., within one year of July 27, 2006—or rescinds a previous election to function as a registration jurisdiction.
- Under subparagraph (C) of subsection (a)(2), these functions are delegated to the State or States if the Attorney General determines that the tribe has not substantially implemented the requirements of SORNA and is not likely to become capable of doing so within a reasonable amount of time.

If a tribe does elect under section 127 to become a SORNA registration jurisdiction, section 127(b) specifies that this does not mean that the tribe must duplicate registration and notification functions that are fully carried out by the State or States within which the tribe is located, and subsection (b) further authorizes the tribes and the States to make cooperative arrangements for the discharge of some or all of these functions. For example, SORNA section 118 requires jurisdictions to make information concerning their sex offenders available to the public through the Internet. If a tribe did not want to maintain a separate sex offender Web site for this purpose, it would not need to do so, as long as a cooperative agreement was made with the State to have information concerning the tribe's registrants posted on the State's sex offender Web site. Likewise, a tribe that elects to be a SORNA registration jurisdiction remains free to make cooperative agreements under which the State (or a political subdivision thereof) will handle registration of the tribe's sex offenders—such as initially registering these sex offenders, conducting periodic appearances of the sex offenders to verify the registration information, and receiving reports by the sex offenders concerning changes in the registration information—to the extent and in a manner mutually agreeable to the tribe and the State. In general, the use of cooperative agreements affords tribes flexibility in deciding which functions under SORNA they would seek to have state authorities perform, and which they wish to control or discharge directly. For example, the State could carry out certain registration functions, but the tribe could retain jurisdiction over the arrest within its territory of sex

offenders who fail to register, update registrations, or make required verification appearances, if a cooperative agreement between the tribe and the State so provided.

IV. Covered Sex Offenses and Sex Offenders

SORNA refers to the persons required to register under its standards as ''sex offenders,'' and section 111(1) of SORNA defines ''sex offender'' in the relevant sense to mean ''an individual who was convicted of a sex offense.'' ''Sex offense'' is in turn defined in section 111(5) and related provisions. The term encompasses a broad range of offenses of a sexual nature under the law of any jurisdiction—including offenses under federal, military, state, territorial, local, tribal, and foreign law, but with some qualification regarding foreign convictions as discussed below.

A. Convictions Generally

A ''sex offender'' defined in SORNA section 111(1) is a person who was ''convicted'' of a sex offense. Hence, whether an individual has a sex offense ''conviction'' determines whether he or she is within the minimum categories for which the SORNA standards require registration.

The convictions for which SORNA requires registration include convictions for sex offenses by any United States jurisdiction, including convictions for sex offenses under federal, military, state, territorial, or local law. Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions. It is recognized, however, that Indian tribal court proceedings may differ from those in other United States jurisdictions in that the former do not uniformly guarantee the same rights to counsel that are guaranteed in the latter. Accordingly, a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which: (i) The defendant was denied the right to the assistance of counsel, and (ii) the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state proceedings. A jurisdiction will not be deemed to have failed to substantially implement SORNA based on its adoption of such an exception.

Since the SORNA registration requirements are predicated on convictions, registration (or continued registration) is normally not required under the SORNA standards if the predicate conviction is reversed, vacated, or set aside, or if the person is pardoned for the offense on the ground of innocence. This does not mean, however, that nominal changes or terminological variations that do not relieve a conviction of substantive effect negate the SORNA requirements. For example, the need to require registration would not be avoided by a jurisdiction's having a procedure under which the convictions of sex offenders in certain categories (e.g., young adult sex offenders who satisfy certain criteria) are referred to as something other than ''convictions,'' or under which the convictions of such sex offenders may nominally be ''vacated'' or ''set aside,'' but the sex offender is nevertheless required to serve what amounts to a criminal sentence for the offense. Rather, an adult sex offender is ''convicted'' for SORNA purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of a conviction, but does not deprive it of continuing legal validity, does not change its status as a ''conviction'' for purposes of SORNA.

''Convictions'' for SORNA purposes include convictions of juveniles who are prosecuted as adults. It does not include juvenile delinquency adjudications, except under the circumstances specified in SORNA section 111(8). Section 111(8) provides that delinquency adjudications count as convictions ''only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.''

Hence, SORNA does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses. Considering the definition of the federal ''aggravated sexual abuse'' offense referenced in section 111(8), offenses under a jurisdiction's laws ''comparable to'' that offense are those that cover:

- Engaging in a sexual act with another by force or the threat of serious violence (see 18 U.S.C. 2241(a));
- Engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (see 18 U.S.C. 2241(b)); or
- Engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c)). ''Sexual act'' for this purpose should be understood to include any of the following: (i) Oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of 16. This follows from the definition of sexual act in 18 U.S.C. 2246(2), which applies to the 18 U.S.C. 2241 ''aggravated sexual abuse'' offense.

As with other aspects of SORNA, the foregoing defines minimum standards. Hence, the inclusions and exclusions in the definition of ''conviction'' for purposes of SORNA do not constrain jurisdictions from requiring registration by additional individuals—e.g., more broadly defined categories of juveniles adjudicated delinquent for sex offenses—if they are so inclined.

B. Foreign Convictions

Section 111(5)(B) of SORNA instructs that registration need not be required on the basis of a foreign conviction if the conviction ''was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established [by the Attorney General].'' The following standards are adopted pursuant to section 111(5)(B):

- Sex offense convictions under the laws of Canada, Great Britain, Australia, and New Zealand are deemed to have been obtained with sufficient safeguards for fundamental fairness and due process, and registration must be required for such convictions on the same footing as domestic convictions.
- Sex offense convictions under the laws of any foreign country are deemed to have been obtained with sufficient safeguards for fundamental fairness and due process if the U.S. State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred. Registration must be required on the basis of such convictions on the same footing as domestic convictions.
- With respect to sex offense convictions in foreign countries that do not satisfy the criteria stated above, a jurisdiction is not required to register the convicted person if the jurisdiction determines—through whatever process or procedure it may choose to adopt—that the conviction does not constitute a reliable indication of factual guilt because of the lack of an impartial tribunal, because of denial of the right to respond to the evidence against the person or to present exculpatory evidence, or because of denial of the right to the assistance of counsel.

The foregoing standards do not mean that jurisdictions must incorporate these particular criteria or procedures into their registration systems, if they wish to register foreign sex offense convicts with fewer qualifications or no qualifications. Rather, the stated criteria define the minimum categories of foreign convicts for whom registration is required for compliance with SORNA, and as is generally the case under SORNA, jurisdictions are free to require registration more broadly than the SORNA minimum.

C. Sex Offenses Generally

The general definition of sex offenses for which registration is required under the SORNA standards appears in section 111(5)(A). The clauses in the definition cover the following categories of offenses:

• Sexual Act And Sexual Contact Offenses (section 111(5)(A)(i)): The first clause in the definition covers ''a criminal offense that has an element involving a sexual act or sexual contact with another.'' (''Criminal offense'' in the relevant sense refers to offenses under any body of criminal law, including state, local, tribal, foreign, military, and other offenses, as provided in section 111(6).) The offenses covered by this clause should be understood to include all sexual offenses whose elements involve: (i) Any type or degree of genital, oral, or anal penetration, or (ii) any sexual touching of or contact with a person's body, either directly or through the clothing. Cf. 18 U.S.C. 2246(2)–(3) (federal law definitions of sexual act and sexual contact).

• Specified Offenses Against Minors (section 111(5)(A)(ii)): The second clause in the definition covers ''a criminal offense that is a specified offense against a minor.'' The statute provides a detailed definition of ''specified offense against a minor'' in section 111(7), which is discussed separately below.

• Specified Federal Offenses (section 111(5)(A)(iii)): The third clause covers most sexual offenses under federal law. The covered chapters and offense provisions in the federal criminal code are explicitly identified by citation.

• Specified Military Offenses (section 111(5)(A)(iv)): The fourth clause covers sex offenses under the Uniform Code of Military Justice, as specified by the Secretary of Defense.

• Attempts And Conspiracies (section 111(5)(A)(v)): The final clause in the definition covers attempts and conspiracies to commit offenses that are otherwise covered by the definition of ''sex offenses.'' This includes both offenses prosecuted under general attempt or conspiracy provisions, where the object offense falls under the SORNA ''sex offense'' definition, and particular offenses that are defined as, or in substance amount to, attempts or conspiracies to commit offenses that are otherwise covered. For example, in the latter category, a jurisdiction may define an offense of ''assault with intent to commit rape.'' Whether or not the word ''attempt'' is used in the definition of the offense, this is in substance an offense that covers certain attempts to commit rapes and hence is covered under the final clause of the SORNA definition.

SORNA section 111(5)(C) qualifies the foregoing definition of ''sex offense'' to exclude ''[a]n offense involving consensual sexual conduct * * * if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than four years older than the victim.'' The general exclusion with respect to consensual sexual offenses involving adult victims means, for example, that a jurisdiction does not have to require registration based on prostitution offenses that consist of the offender paying or receiving payment from an adult for a sexual act between them (unless the victim is under the custodial authority of the offender). The exclusion for certain cases involving child victims based on victim age and age difference means that a jurisdiction may not have to require registration in some cases based on convictions under provisions that prohibit sexual acts or contact (even if consensual) with underage persons. For example, under the laws of some jurisdictions, an 18-year-old may be criminally liable for engaging in consensual sex with a 15-year-old. The jurisdiction would not have to require registration in such a case to comply with the SORNA standards, since the victim was at least 13 and the offender was not more than four years older.

D. Specified Offenses Against Minors

The offenses for which registration is required under the SORNA standards include any ''specified offense against a minor'' as defined in section 111(7). The SORNA section 111(7) definition of specified offense against a minor covers any offense against a minor—i.e., a person under the age of 18, as provided in section 111(14)—that involves any of the following:

• Kidnapping or False Imprisonment of a Minor (section 111(7)(A)–(B)): These clauses cover ''[a]n offense (unless committed by a parent or guardian) involving kidnapping [of a minor]'' and ''[a]n offense (unless committed by a parent or guardian) involving false imprisonment [of a minor].'' The relevant offenses are those whose gravamen is abduction or unlawful restraint of a person, which go by different names in different jurisdictions, such as ''kidnapping,'' ''criminal restraint,'' or ''false imprisonment.'' Jurisdictions can implement the offense coverage requirement of these clauses by requiring registration for persons convicted of offenses of this type (however designated) whose victims were below the age of 18. It is left to jurisdictions' discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent or guardian of the victim.

• Solicitation of a Minor to Engage in Sexual Conduct (section 111(7)(C)): This clause covers ''[s]olicitation [of a minor] to engage in sexual conduct.'' ''Solicitation'' under this clause and other SORNA provisions that use the term should be understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct. ''Sexual conduct'' should be understood to refer to any sexual activity involving physical contact. (See the discussion later in this list of ''criminal sexual conduct'' under section 111(7)(H).) Hence, jurisdictions can implement the offense coverage requirement under this clause by requiring registration, in cases where the victim was below the age of 18, based on:

○ Any conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the elements of the object offense include sexual activity involving physical contact, and

○ Any conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

• Use of a Minor in a Sexual Performance (section 111(7)(D)): This clause covers offenses involving ''[u]se [of a minor] in a sexual performance.'' That includes both live performances and using minors in the production of pornography, and has some overlap with section 111(7)(G), which expressly covers child pornography offenses.

• Solicitation of a Minor to Practice Prostitution (section 111(7)(E)): This

clause covers offenses involving ''[s]olicitation [of a minor] to practice prostitution.'' Jurisdictions can implement the offense coverage requirement under this clause by requiring registration, in cases where the victim was below the age of 18, based on:

○ Any conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

○ Any conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

• Video Voyeurism Involving a Minor (section 111(7)(F)): This clause covers ''[v]ideo voyeurism as described in section 1801 of title 18, United States Code [against a minor].'' The cited federal offense in essence covers capturing the image of a private area of another person's body, where the victim has a reasonable expectation of privacy against such conduct. Jurisdictions can implement the offense coverage requirement under this clause by requiring registration for offenses of this type, in cases where the victim was below the age of 18.

• Possession, Production, or Distribution of Child Pornography (section 111(7)(G)): This clause covers ''possession, production, or distribution of child pornography.'' Jurisdictions can implement the offense coverage requirement under this clause by requiring registration for offenses whose gravamen is creating or participating in the creation of sexually explicit visual depictions of persons below the age of 18, making such depictions available to others, or having or receiving such depictions.

• Criminal Sexual Conduct Involving a Minor and Related Internet Activities (section 111(7)(H)): This clause covers ''[c]riminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.'' The definition has two parts:

○ The ''criminal sexual conduct involving a minor'' language in this definition covers sexual offenses whose elements involve physical contact with the victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was below 18 at the time of the offense. In addition, it covers offenses whose elements involve using other persons in prostitution—such as provisions defining crimes of ''pandering,'' ''procuring,'' or ''pimping''—in cases where the victim was below 18 at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense, such as prosecution for specially defined child molestation or child prostitution offenses. Jurisdictions can implement the offense coverage requirement under the ''criminal sexual conduct involving a minor'' language of this clause by requiring registration for ''criminal sexual conduct'' offenses as described above whenever the victim was in fact below the age of 18 at the time of the offense. (Section 111(7)(C) and (E) separately require coverage of offenses involving solicitation of a minor to engage in sexual conduct or to practice prostitution, but registration must be required for offenses involving sexual conduct with a minor or the use of a minor in prostitution in light of section 111(7)(H), whether or not the offense involves ''solicitation'' of the victim.)

○ Jurisdictions can implement the ''use of the Internet to facilitate or attempt such conduct'' part of this definition by requiring registration for offenses that involve use of the Internet in furtherance of criminal sexual conduct involving a minor as defined above, such as attempting to lure minors through Internet communications for the purpose of sexual activity.

• Conduct By Its Nature A Sex Offense Against a Minor (section 111(7)(I)): The final clause covers ''[a]ny conduct that by its nature is a sex offense against a minor.'' It is intended to ensure coverage of convictions under statutes defining sexual offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation or child prostitution offenses, and other offenses prohibiting sexual activity with underage persons. Jurisdictions can comply with the offense coverage requirement under this clause by including convictions for such offenses in their registration requirements.

E. Protected Witnesses

The requirement that jurisdictions substantially implement SORNA does not preclude their taking measures needed to protect the security of individuals who have been provided new identities and relocated under the federal witness security program (see 18 U.S.C. 3521 *et seq.*) or under other comparable witness security programs operated by non-federal jurisdictions. A jurisdiction may conclude that it is necessary to exclude an individual afforded protection in such a program from its sex offender registry or from public notification for security reasons, though the individual otherwise satisfies the criteria for registration and notification under SORNA. Alternatively, the jurisdiction may choose not to waive registration but may identify the registrant in the registration system records only by his or her new identity or data, if such modifications can be so devised that they are not transparent and do not permit the registrant's original identity or participation in a witness security program to be inferred. Jurisdictions are permitted and encouraged to make provision in their laws and procedures to accommodate consideration of the security of such individuals and to honor requests from the United States Marshals Service and other agencies responsible for witness protection in order to ensure that their original identities are not compromised.

With respect to witnesses afforded federal protection, 18 U.S.C. 3521(b)(1)(H) specifically authorizes the Attorney General to ''protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons.'' U.S. Department of Justice Witness Security Program officials accordingly determine on a case-by-case basis whether such witnesses will be required to register, and if registration occurs, whether it will utilize new identities, modified data, or other special conditions or procedures that are warranted to avoid jeopardizing the safety of the protected witnesses.

V. Classes of Sex Offenders

Section 111(2)–(4) of SORNA defines three ''tiers'' of sex offenders. The tier classifications have implications in three areas: (i) Under section 115, the required duration of registration depends primarily on the tier; (ii) under section 116, the required frequency of in-person appearances by sex offenders to verify registration information depends on the tier; (iii) under section 118(c)(1), information about tier I sex offenders convicted of offenses other than specified offenses against a minor may be exempted from Web site disclosure.

The use of the ''tier'' classifications in SORNA relates to substance, not form or terminology. Thus, to implement the SORNA requirements, jurisdictions do not have to label their sex offenders as ''tier I,'' ''tier II,'' and ''tier III,'' and do not have to adopt any other particular approach to labeling or categorization of sex offenders. Rather, the SORNA

requirements are met so long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the duration of registration, frequency of in-person appearances for verification, and extent of Web site disclosure that SORNA requires for that tier.

For example, suppose that a jurisdiction decides to subject all sex offenders to lifetime registration, quarterly verification appearances, and full Web site posting as described in Part VII of these Guidelines. That would meet the SORNA requirements with respect to sex offenders satisfying the ''tier III'' criteria, and exceed the minimum required by SORNA with respect to sex offenders satisfying the ''tier II'' or ''tier I'' criteria. Hence, such a jurisdiction would be able to implement the SORNA requirements with respect to all sex offenders without any labeling or categorization, and without having to assess individual registrants against the tier criteria in the SORNA definitions. Likewise, any other approach a jurisdiction may devise is acceptable if it ensures that sex offenders satisfying the criteria for each SORNA tier are subject to duration of registration, appearance frequency, and Web site disclosure requirements that meet those SORNA requires for the tier.

Turning to the specific tier definitions, SORNA section 111(2) defines ''tier I sex offender'' to mean ''a sex offender other than a tier II or tier III sex offender.'' Thus, tier I is a residual class that includes all sex offenders who do not satisfy the criteria for tier II or tier III. For example, tier I includes a sex offender whose registration offense is not punishable by imprisonment for more than one year, a sex offender whose registration offense is the receipt or possession of child pornography, and a sex offender whose registration offense is a sexual assault against an adult that involves sexual contact but not a completed or attempted sexual act.

The definitions of tier II and tier III—in section 111(3) and 111(4) respectively—are both limited to cases in which the offense for which the sex offender is required to register ''is punishable by imprisonment for more than 1 year.'' This means that the statutory maximum penalty possible for the offense exceeds one year. It does not mean that inclusion in these tiers is limited to cases in which the sex offender is actually sentenced to more than a year of imprisonment.

Because the definitions of tier II and tier III are limited to certain offenses punishable by imprisonment for more than one year, and federal law does not permit imprisonment for more than one year based on Indian tribal court convictions, all tribal court convictions are tier I offenses. Moreover, regardless of which jurisdiction convicts the sex offender, the requirements with respect to the potential length of imprisonment under the statute relate to individual offenses rather than to aggregate penalties. For example, suppose that a sex offender is charged in three counts with the commission of sex offenses each of which is punishable by at most one year of imprisonment, and upon conviction is sentenced to three consecutive terms of six months of incarceration. Though the aggregate penalty is 18 months, these convictions do not place the sex offender above tier I, because each offense was not punishable by more than one year of imprisonment.

If the requirement of an offense punishable by imprisonment for more than one year is satisfied, the remaining offense-related criteria for tier II are that the registration offense falls within one of two lists. In general terms, these lists cover most sexual abuse or exploitation offenses against minors. (Here as elsewhere in SORNA, ''minor'' means a person under the age of 18—see SORNA section 111(14).) The first list, appearing in section 111(3)(A), covers offenses committed against minors that are comparable to or more severe than a number of cited federal offenses—those under 18 U.S.C. 1591, 2422(b), 2423(a), and 2244—and attempts and conspiracies to commit such offenses. The second list, appearing in section 111(a)(3)(B), covers use of a minor in a sexual performance, solicitation of a minor to practice prostitution, and production or distribution of child pornography. Determining whether a jurisdiction's offenses satisfy the criteria for this tier is simplified by recognizing that the various cited and described offenses essentially cover:

- Offenses involving the use of minors in prostitution, and inchoate or preparatory offenses (including attempts, conspiracies, and solicitations) that are directed to the commission of such offenses;
- Offenses against minors involving sexual contact—i.e., any sexual touching of or contact with the intimate parts of the body, either directly or through the clothing—and inchoate or preparatory offenses (including attempts, conspiracies, and solicitations) that are directed to the commission of such offenses;
- Offenses involving use of a minor in a sexual performance; and
- Offenses involving the production or distribution of child pornography, i.e., offenses whose gravamen is creating or participating in the creation of sexually explicit visual depictions of minors or making such depictions available to others.

Hence, jurisdictions can implement the relevant SORNA requirements by according ''tier II'' treatment to sex offenders convicted of offenses of these four types. The sex offenders who must be so treated are not limited to those convicted of offenses of these types whose elements require that the victim be below a certain age, but rather include as well those convicted of more generally defined offenses that may be committed against either adult or child victims, in cases in which the victim was in fact below the age of 18. For example, in a case in which the sex offender was convicted of a generally defined ''sexual contact'' offense, whose elements include no specification as to victim age, tier II treatment is required if the victim was in fact below 18.

The corresponding offense coverage specifications for ''tier III'' in section 111(4)(A)–(B) cover offenses punishable by more than one year of imprisonment in the following categories:

- Offenses comparable to or more severe than aggravated sexual abuse or sexual abuse as described in 18 U.S.C. 2241 and 2242, or an attempt or conspiracy to commit such an offense. Considering the definitions of the cited federal offenses, comparable offenses under the laws of other jurisdictions would be those that cover:
  - Engaging in a sexual act with another by force or threat (see 18 U.S.C. 2241(a), 2242(1));
  - Engaging in a sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate (see 18 U.S.C. 2241(b), 2242(2)), or
  - Engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c)).

Considering the related definition in 18 U.S.C. 2246(2), ''sexual act'' for this purpose would include: (i) Oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of 16. (This definition of ''sexual act'' is the same as that applicable in the SORNA requirement of registration based on certain juvenile delinquency adjudications—see Part IV.A of these Guidelines—but the range of covered offenses is in some respects broader here, as indicated; compare SORNA section 111(4)(A)(i), which references both aggravated sexual abuse and sexual abuse, with SORNA section 111(8), the

juvenile coverage provision, which references only aggravated sexual abuse.)

• Offenses against a child below the age of 13 that are comparable to or more severe than abusive sexual contact as defined in 18 U.S.C. 2244, or an attempt or conspiracy to commit such an offense. Considering the definitions of the federal offenses in 18 U.S.C. 2244 and the related definition in 18 U.S.C. 2246(3), comparable offenses under the laws of other jurisdictions would be those that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing, where the victim is under 13.

• Kidnapping of a minor (unless committed by a parent or guardian).

Hence, jurisdictions can implement the relevant SORNA requirements by according ''tier III'' treatment to sex offenders convicted of offenses of these three types.

In addition to including criteria relating to the nature of the registration offense, the definitions of tier II and tier III accord significance to a registrant's history of recidivism. Specifically, section 111(3)(C) places in tier II any sex offender whose registration offense is punishable by imprisonment for more than one year, where that offense ''occurs after the offender becomes a tier I sex offender.'' Thus, any sex offender whose registration offense is punishable by more than one year of imprisonment who has a prior sex offense conviction is at least in tier II. Likewise, section 111(4)(C) places in tier III any sex offender whose registration offense is punishable by imprisonment for more than one year, where that offense ''occurs after the offender becomes a tier II sex offender.'' Thus, any sex offender whose registration offense is punishable by more than one year of imprisonment, and who at the time of that offense already satisfied the criteria for inclusion in tier II, is in tier III.

VI. Required Registration Information

Section 114 of SORNA defines the required minimum informational content of sex offender registries. It is divided into two lists. The first list, set forth in subsection (a) of section 114, describes information that the registrant will normally be in a position to provide. The second list, set forth in subsection (b), describes information that is likely to require some affirmative action by the jurisdiction to obtain, beyond asking the sex offender for the information. Supplementary to the information that the statute explicitly describes, section 114(a)(7) and (b)(8) authorize the Attorney General to specify additional information that must be obtained and included in the registry. This expansion authority is utilized to require including in the registries a number of additional types of information, such as information about registrants' e-mail addresses, telephone numbers, and the like, information concerning the whereabouts of registrants who lack fixed abodes or definite places of employment, and information about temporary lodging, as discussed below.

In order to implement requirements for the sharing or disclosure of registration information appearing in other sections of SORNA (sections 113(c), 119(b), 121(b)—see Parts VII and X of these Guidelines for discussion), jurisdictions will need to maintain all required registration information in digitized form that will enable it to be immediately accessed by or transmitted to various entities. Hence, the jurisdiction's registry must be an electronic database, and descriptions of required types of information in section 114 should consistently be understood as referring to digitizable information rather than hard copies or physical objects. This does not mean, however, that all required registration information must be reproduced in a single segregated database, since the same effect may be achieved by including in the central registry database links or identification numbers that provide access to the information in other databases in which it is included (e.g., with respect to criminal history, fingerprint, and DNA information). These points are further discussed in connection with the relevant informational items.

As with SORNA's requirements generally, the informational requirements of section 114 and these Guidelines define a floor, not a ceiling, for jurisdictions' registries. Hence, jurisdictions are free to obtain and include in their registries a broader range of information than the minimum requirements described in this Part.

The required minimum informational content for sex offender registries is as follows:

• Name, Aliases, and Remote Communication Identifiers and Addresses (section 114(a)(1), (a)(7)):

○ Names and Aliases (section 114(a)(1)): The registry must include ''[t]he name of the sex offender (including any alias used by the individual).'' The names and aliases required by this provision include, in addition to the registrant's primary or given name, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers used for self-identification in Internet communications or postings, and traditional names given by family or clan pursuant to ethnic or tribal tradition.

○ Internet Identifiers and Addresses (section 114(a)(7)): In the context of Internet communications there may be no clear line between names or aliases that are required to be registered under SORNA section 114(a)(1) and addresses that are used for routing purposes. Moreover, regardless of the label, including in registries information on designations used by sex offenders for purposes of routing or self-identification in Internet communications—e.g., e-mail and instant messaging addresses—serves the underlying purposes of sex offender registration and notification. Among other potential uses, having this information may help in investigating crimes committed online by registered sex offenders—such as attempting to lure children or trafficking in child pornography through the Internet—and knowledge by sex offenders that their Internet identifiers are known to the authorities may help to discourage them from engaging in such criminal activities. The authority under section 114(a)(7) is accordingly exercised to require that the information included in the registries must include all designations used by sex offenders for purposes of routing or self-identification in Internet communications or postings.

○ Telephone Numbers (section 114(a)(7)): Requiring sex offenders to provide their telephone numbers (both for fixed location phones and cell phones) furthers the objectives of sex offender registration. One obvious purpose in having such information is to facilitate communication between registration personnel and a sex offender in case issues arise relating to the sex offender's registration. Moreover, as communications technology advances, the boundaries blur between text-based and voice-based communications media. Telephone calls may be transmitted through the Internet. Text messages may be sent between cell phones. Regardless of the particular communication medium, and regardless of whether the communication involves text or voice, sex offenders may potentially utilize remote communications in efforts to contact or lure potential victims. Hence, including phone numbers in the registration information may help in investigating crimes committed by registrants that involved telephonic communication with the victim, and knowledge that their phone numbers are known to the authorities may help sex offenders to resist the temptation to commit crimes

by this means. The authority under section 114(a)(7) is accordingly exercised to require that the information included in the registries must include sex offenders' telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications.

• Social Security Number (section 114(a)(2), (a)(7)): The registry must include ''[t]he Social Security number of the sex offender.'' In addition to any valid Social Security number issued to the registrant by the government, the information the jurisdiction requires registrants to provide under this heading must include any number that the registrant uses as his or her purported Social Security number since registrants may, for example, attempt to use false Social Security numbers in seeking employment that would provide access to children. To the extent that purported (as opposed to actual) Social Security numbers may be beyond the scope of the information required by section 114(a)(2), the authority under section 114(a)(7) is exercised to require that information on such purported numbers be obtained and included in the registry as well.

• Residence, Lodging, and Travel Information (section 114(a)(3), (a)(7)):

○ Residence Address (section 114(a)(3)): The registry must include ''the address of each residence at which the sex offender resides or will reside.'' As provided in SORNA section 111(13), residence refers to ''the location of the individual's home or other place where the individual habitually lives.'' (For more as to the meaning of ''resides'' under SORNA, see Part VIII of these Guidelines.) The statute refers to places in which the sex offender ''will reside'' so as to cover situations in which, for example, a sex offender is initially being registered prior to release from imprisonment, and hence is not yet residing in the place or location to which he or she expects to go following release.

○ Other Residence Information (section 114(a)(7)): Sex offenders who lack fixed abodes are nevertheless required to register in the jurisdictions in which they reside, as discussed in Part VIII of these Guidelines. Such sex offenders cannot provide the residence address required by section 114(a)(3) because they have no definite ''address'' at which they live. Nevertheless, some more or less specific description should normally be obtainable concerning the place or places where such a sex offender habitually lives—e.g., information about a certain part of a city that is the sex offender's habitual locale, a park or spot on the street (or a number of such places) where the sex offender stations himself during the day or sleeps at night, shelters among which the sex offender circulates, or places in public buildings, restaurants, libraries, or other establishments that the sex offender frequents. Having this type of location information serves the same public safety purposes as knowing the whereabouts of sex offenders with definite residence addresses. Hence, the authority under SORNA section 114(a)(7) is exercised to require that information be obtained about where sex offenders who lack fixed abodes habitually live with whatever definiteness is possible under the circumstances. Likewise, in relation to sex offenders who lack a residence address for any other reason—e.g., a sex offender who lives in a house in a rural or tribal area that has no street address—the registry must include information that identifies where the individual has his or her home or habitually lives.

○ Temporary Lodging Information (section 114(a)(7)): Sex offenders who reoffend may commit new offenses at locations away from the places in which they have a permanent or long-term presence. Indeed, to the extent that information about sex offenders' places of residence is available to the authorities, but information is lacking concerning their temporary lodging elsewhere, the relative attractiveness to sex offenders of molesting children or committing other sexual crimes while traveling or visiting away from home increases. Hence, to achieve the objectives of sex offender registration, it is valuable to have information about other places in which sex offenders are staying, even if only temporarily. The authority under SORNA section 114(a)(7) is accordingly exercised to provide that jurisdictions must require sex offenders to provide information about any place in which the sex offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there. The benefits of having this information include facilitating the successful investigation of crimes committed by sex offenders while away from their normal places of residence, employment, or school attendance, and decreasing the attractiveness to sex offenders of committing crimes in such circumstances.

○ Travel and Immigration Documents (section 114(a)(7)): The authority under SORNA section 114(a)(7) is exercised to provide that registrants must be required to produce or provide information about their passports, if they have passports, and that registrants who are aliens must be required to produce or provide information about documents establishing their immigration status. The registry must include digitized copies of these documents, the critical information from these documents, or links to another database or databases that contain such information. Having this type of information in the registries serves various purposes, including helping to locate and apprehend registrants who may attempt to leave the United States after committing new sex offenses or registration violations; facilitating the tracking and identification of registrants who leave the United States but later reenter while still required to register (see SORNA section 128); and crosschecking the accuracy and completeness of other types of information that registrants are required to provide—e.g., if immigration documents show that an alien registrant is in the United States on a student visa but the registrant fails to provide information concerning the school attended as required by SORNA section 114(a)(5).

• Employment Information (section 114(a)(4), (a)(7)):

○ Employer Name and Address (section 114(a)(4)): The registry must include ''[t]he name and address of any place where the sex offender is an employee or will be an employee.'' SORNA section 111(12) explains that ''employee'' includes ''an individual who is self-employed or works for any other entity, whether compensated or not.'' As the definitional provisions indicate, the information required under this heading is not limited to information relating to compensated work or a regular occupation, but includes as well name and address information for any place where the registrant works as a volunteer or otherwise works without remuneration.

○ Other Employment Information (section 114(a)(7)): A sex offender who is employed may not have a fixed place of employment—e.g., a long-haul trucker whose ''workplace'' is roads and highways throughout the country, or a self-employed handyman who works out of his home and does repair or home-improvement work at other people's homes. Knowing as far as possible where such a sex offender is in the course of employment serves the same public safety purposes as the corresponding information regarding a sex offender who is employed at a fixed location. The authority under section 114(a)(7) is accordingly exercised to require that information be obtained and included in the registry concerning the

places where such a sex offender works with whatever definiteness is possible under the circumstances, such as information about normal travel routes or the general area(s) in which the sex offender works.

○ Professional Licenses (section 114(a)(7)): The authority under section 114(a)(7) is exercised to require that information be obtained and included in the registry concerning all licensing of the registrant that authorizes the registrant to engage in an occupation or carry out a trade or business. Information of this type may be helpful in locating the registrant if he or she absconds, may provide a basis for notifying the responsible licensing authority if the registrant's conviction of a sex offense may affect his or her eligibility for the license, and may be useful in crosschecking the accuracy and completeness of other information the registrant is required to provide—e.g., if the registrant is licensed to engage in a certain occupation but does not provide name or place of employment information as required by section 114(a)(4) for such an occupation.

• School Information (section 114(a)(5)): The registry must include ''[t]he name and address of any place where the sex offender is a student or will be a student.'' Section 111(11) defines ''student'' to mean ''an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.'' As the statutory definition indicates, the requirement extends to all types of educational institutions. Hence, this information must be provided for private schools as well as public schools, including both parochial and non-parochial private schools, and regardless of whether the educational institution is attended for purposes of secular, religious, or cultural studies. The registration information requirement of section 114(a)(5) refers to the names and addresses of educational institutions where a sex offender has or will have a physical presence as a student. It does not require information about a sex offender's participating in courses only remotely through the mail or the Internet. (Internet identifiers and addresses used by a sex offender in such remote communications, however, must be included in the registration information as provided in the discussion of ''Internet Identifiers and Addresses'' earlier in this list.)

• Vehicle Information (section 114(a)(6), (a)(7)): The registry must include ''[t]he license plate number and a description of any vehicle owned or operated by the sex offender.'' This includes, in addition to vehicles registered to the sex offender, any vehicle that the sex offender regularly drives, either for personal use or in the course of employment. A sex offender may not regularly use a particular vehicle or vehicles in the course of employment, but may have access to a large number of vehicles for employment purposes, such as using many vehicles from an employer's fleet in a delivery job. In a case of this type, jurisdictions are not required to obtain information concerning all such vehicles to satisfy SORNA's minimum informational requirements, but jurisdictions are free to require such information if they are so inclined. The authority under section 114(a)(7) is exercised to define and expand the required information concerning vehicles in two additional respects. First, the term ''vehicle'' should be understood to include watercraft and aircraft, in addition to land vehicles, so descriptive information must be required for all such vehicles owned or operated by the sex offender. The information must include the license plate number if it is a type of vehicle for which license plates are issued, or if it has no license plate but does have some other type of registration number or identifier, then information concerning such a registration number or identifier must be included. To the extent that any of the information described above may be beyond the scope of section 114(a)(6), the authority under section 114(a)(7) is exercised to provide that it must be obtained and included in the registry. Second, the sex offender must be required to provide and the registry must include information concerning the place or places where the registrant's vehicle or vehicles are habitually parked, docked, or otherwise kept. Having information of this type may help to prevent flight, facilitate investigation, or effect an apprehension if the registrant is implicated in the commission of new offenses or violates registration requirements.

• Date of Birth (section 114(a)(7)). The authority under section 114(a)(7) is exercised to require date of birth information for registrants, which must be included in the registry. Since date of birth is regularly utilized as part of an individual's basic identification information, having this information in the registry is of obvious value in helping to identify, track, and locate registrants. The information the jurisdiction requires registrants to provide under this heading must include any date that the registrant uses as his or her purported date of birth—not just his or her actual date of birth—since registrants may, for example, provide false date of birth information in seeking employment that would provide access to children.

• Physical Description (section 114(b)(1)): The registry must include ''[a] physical description of the sex offender.'' This must include a description of the general physical appearance or characteristics of the sex offender, and any identifying marks, such as scars or tattoos.

• Text of Registration Offense (section 114(b)(2)): The registry must include ''[t]he text of the provision of law defining a criminal offense for which the sex offender is registered.'' As with other information in the registries, this does not mean that the registry must be a paper records system that includes a hard copy of the statute defining the registration offense. Rather, the registry must be an electronic database, and the relevant statutory provision must be included as electronic text. Alternatively, this requirement can be satisfied by including in the central registry database a link or citation to the statute defining the registration offense if: (i) Doing so provides online access to the linked or cited provision, and (ii) the link or citation will continue to provide access to the offense as formulated at the time the registrant was convicted of it, even if the defining statute is subsequently amended.

• Criminal History and Other Criminal Justice Information (section 114(b)(3)): The registry must include ''[t]he criminal history of the sex offender, including the date of all arrests and convictions; status of parole, probation, or supervised release; registration status [i.e., whether the sex offender is in violation of the registration requirement and unlocatable]; and the existence of any outstanding arrest warrants for the sex offender.'' This requirement can be satisfied by including the specified types of information in the central registry database, or by including in that database links or identifying numbers that provide access to these types of information in criminal justice databases that contain them.

• Current Photograph (section 114(b)(4)): The registry information must include ''[a] current photograph of the sex offender.'' As with other information in the registries, this does not mean that the registry must be a paper records system that includes physical photographs. Rather, the photographs of sex offenders must be included in digitized form in an electronic registry, so as to permit the

electronic transmission of registration information that is necessary to implement other SORNA requirements. (For more about the taking of photographs and keeping them current, see the discussion of periodic in-person appearances in Part XI of these Guidelines.)

• Fingerprints and Palm Prints (section 114(b)(5)): The registry information must include ''[a] set of fingerprints and palm prints of the sex offender.'' As with other registration information, this should be understood to refer to digitized fingerprint and palm print information rather than physical fingerprint cards and palm prints. The requirement can be satisfied by including such digitized fingerprint and palm print information in the central registry database, or by providing links or identifying numbers in the central registry database that provide access to fingerprint and palm print information in other databases for each registered sex offender.

• DNA (section 114(b)(6)): The registry information must include ''[a] DNA sample of the sex offender.'' This means that a DNA sample must be taken, or must have been taken, from the sex offender, for purposes of analysis and entry of the resulting DNA profile into the Combined DNA Index System (CODIS). The requirement is satisfied by including information in the central registry database that confirms collection of such a sample from the sex offender for purposes of analysis and entry of the DNA profile into CODIS or inclusion of the sex offender's DNA profile in CODIS.

Driver's License or Identification Card (section 114(b)(7)): The registry information must include ''[a] photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.'' The requirement can be satisfied by including a digitized photocopy of the specified documents in the central registry database for each sex offender to whom such a document has been issued. Alternatively, it can be satisfied by including in the central registry database links or identifying numbers that provide access in other databases (such as a Department of Motor Vehicles database) to the information that would be shown by such a photocopy.

VII. Disclosure and Sharing of Information

The SORNA requirements for disclosure and sharing of information about registrants appear primarily in section 118, which is concerned with sex offender Web sites, and section 121, which is concerned with community notification in a broader sense and with some more targeted types of disclosures. The two sections will be discussed separately.

A. Sex Offender Web Sites

Section 118(a) of SORNA states a general rule that jurisdictions are to ''make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry.'' This general requirement is subject to certain mandatory and discretionary exemptions, appearing in subsections (b) and (c) of section 118, which are discussed below. Currently, all 50 States, the District of Columbia, Puerto Rico, and Guam have sex offender Web sites that make information about registered sex offenders available to the public. The listed jurisdictions may need to modify their existing Web sites to varying degrees to implement the requirements of section 118.

Beyond stating a general rule of Web site posting for sex offender information, subsection (a) of section 118 includes requirements about the field-search capabilities of the jurisdictions' Web sites. In part, it states that these field search capabilities must include searches by ''zip code or geographic radius set by the user.'' In other words, the Web sites must be so designed that members of the public who access a Web site are able to specify particular zip code areas, and are able to specify geographic radii—e.g., within one mile of a specified address—and thereby bring up on the Web site the information about all of the posted sex offenders in the specified zip code or geographic area.

Subsection (a) of section 118 further states that each Web site ''shall also include * * * all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Web site and shall participate in that Web site as provided by the Attorney General.'' The statutory basis for the referenced National Sex Offender Public Web site (NSOPW) appears in SORNA section 120. It is operated by the Department of Justice at the address *http://www.nsopr.gov.* All 50 States, the District of Columbia, Puerto Rico, and Guam currently participate in the NSOPW, which provides public access to the information in their respective sex offender Web sites through single-query searches on a national site. As noted, participation in the NSOPW is a required element of SORNA implementation. To satisfy the requirement under section 118(a) of having ''all field search capabilities needed for full participation in [the NSOPW],'' jurisdictions' sex offender Web sites must allow searches by name, county, and city/town, as well as having the zip code and geographic radius search capacities mentioned specifically in the statute.

Other SORNA requirements relating to sex offender Web sites are discussed in the remainder of this subpart under the following headings: mandatory exemptions, discretionary exemptions and required inclusions, remote communication addresses, and other provisions.

Mandatory Exemptions

Section 118(b)(1)–(3) identifies three types of information that are mandatorily exempt from disclosure, and section 118(b)(4) gives the Attorney General the authority to create additional mandatory exemptions. The limitations of subsection (b) only constrain jurisdictions in relation to the information made available on their publicly accessible sex offender Web sites. They do not limit the discretion of jurisdictions to disclose these types of information in other contexts. The types of information that are within the mandatory exemptions from public sex offender Web site disclosure are as follows:

• *Victim Identity:* Section 118(b)(1) exempts ''the identity of any victim of a sex offense.'' The purpose of this exemption is to protect victim privacy. So long as the victim is not identified, this does not limit jurisdictions' discretion to include on the Web site information about the nature and circumstances of the offense, which may include information relating to the victim, such as the age and gender of the victim, and the conduct engaged in by the sex offender against the victim.

• *Social Security Number:* Section 118(b)(2) exempts ''the Social Security number of the sex offender.''

• *Arrests Not Resulting in Conviction:* Section 118(b)(3) exempts ''any reference to arrests of the sex offender that did not result in conviction.'' As noted, this mandatory exemption, like the others, only affects the information that may be posted on a jurisdiction's public sex offender Web site. It does not limit a jurisdiction's use or disclosure of arrest information in any other context, such as disclosure to law enforcement agencies for law enforcement purposes, or disclosure to the public (by means other than posting on the sex offender Web site) under ''open records'' laws.

• *Travel and Immigration Document Numbers:* The authority under section 118(b)(4) is exercised to exempt the numbers assigned to registrants'

passports and immigration documents. This exemption reflects concerns that public posting of such information could facilitate identity theft and could provide a source of passport and immigration document numbers to individuals seeking to enter, remain in, or travel from the United States using forged documents or false identities. Like the other mandatory exemptions, this exemption only affects the information that may be posted on a jurisdiction's public sex offender Web site. It does not limit a jurisdiction's use or disclosure of registrants' travel or immigration document information in any other context, such as disclosure to agencies with law enforcement, immigration, or national security functions.

Discretionary Exemptions and Required Inclusions

Section 118(c)(1)–(3) provides three optional exemptions, which describe information that jurisdictions may exempt from their Web sites in their discretion. The first of these is ''any information about a tier I sex offender convicted of an offense other than a specified offense against a minor.'' The meaning of ''tier I sex offender'' is explained in Part V of these Guidelines, and the meaning of ''specified offense against a minor'' is explained in Part IV.D of these Guidelines. The second and third optional exemptions are, respectively, ''the name of an employer of the sex offender'' and ''the name of an educational institution where the sex offender is a student.'' As noted, these exclusions are discretionary. Jurisdictions are free to include these types of information on their sex offender Web sites if they are so inclined.

Section 118(c)(4) provides a further optional exemption of ''any other information exempted from disclosure by the Attorney General.'' This authorization recognizes that there are some additional types of information that are required to be included in sex offender registries by section 114, but whose required disclosure through public sex offender Web sites may reasonably be regarded by particular jurisdictions as inappropriate or unnecessary. For example, public access to registrants' remote communication routing addresses (such as e-mail addresses) presents both risks and benefits. Minimizing the risks and maximizing the benefits depends on the appropriate design of the means and form of access. The recommended treatment of such information is discussed later in this subpart. A number of other types of required registration information, such as fingerprints, palm prints, and DNA information, are primarily or exclusively of interest to law enforcement.

Following the exclusion of types of information that are exempt from public Web site disclosure on a mandatory basis under section 118(b), that are expressly identified as subject to discretionary exemptions under section 118(c)(1)–(3), or that will be allowed as additional discretionary exemptions on the basis of section 118(c)(4), several core types of information remain whose public disclosure through the sex offender Web sites has the greatest value in promoting public safety by enabling members of the public to identify sex offenders, to know where they are, and to know what crimes they have committed. These core informational items, which are not within a mandatory or discretionary exemption, and do have to be included by jurisdictions on their public sex offender Web sites, are as follows:

- The name of the sex offender, including any aliases.
- The address of each residence at which the sex offender resides or will reside and, if the sex offender does not have any (present or expected) residence address, other information about where the sex offender has his or her home or habitually lives. If current information of this type is not available because the sex offender is in violation of the requirement to register or unlocatable, the Web site must so note.
- The address of any place where the sex offender is an employee or will be an employee and, if the sex offender is employed but does not have a definite employment address, other information about where the sex offender works.
- The address of any place where the sex offender is a student or will be a student.
- The license plate number and a description of any vehicle owned or operated by the sex offender.
- A physical description of the sex offender.
- The sex offense for which the sex offender is registered and any other sex offense for which the sex offender has been convicted.
- A current photograph of the sex offender.

Part VI of these Guidelines includes more detailed explanation concerning the informational items that the list above requires to be included on the public sex offender Web sites. This list remains subject to the discretionary authority of jurisdictions under section 118(c)(1) to exempt information about a tier I sex offender convicted of an offense other than a specified offense against a minor.

Remote Communication Addresses

Public access to or disclosure of sex offenders' remote communication routing addresses and their equivalent—such as e-mail addresses and telephone numbers—is discussed separately because the issue presents both risks and benefits and merits careful handling by jurisdictions.

On the one hand, appropriately designed forms of access to such information may further the public safety objectives of sex offender registration and notification. For example, the operators of Internet social networking services that serve children may validly wish to check whether the e-mail addresses of individuals on their user lists are those of registered sex offenders, so that they can prevent sex offenders from using their services as avenues for Internet luring of children for purposes of sexual abuse. Likewise, a parent may legitimately wish to check whether the e-mail address of an unknown individual who is communicating with his or her child over the Internet is that of a registered sex offender, for the same protective purpose.

On the other hand, some forms of public disclosure of this type of information—such as including sex offenders' e-mail addresses as part of the information in their individual listings on the sex offender Web sites, which also include their names, locations, etc.—could raise serious concerns about unintended consequences and misuse. Posting of the information in this form could provide ready access by sex offenders to the e-mail addresses of other sex offenders, thereby facilitating networking among such offenders through the Internet for such purposes as: Exchanging information about or providing access to child victims for purposes of sexual abuse; recruiting confederates and accomplices for the purpose of committing child sexual abuse or exploitation offenses or other sexually violent crimes; trafficking in child pornography; and sharing ideas and information about how to commit sexual crimes, avoid detection and apprehension for committing such crimes, or evade registration requirements.

The public safety benefits of public access in this context may be realized, and the risks and concerns addressed, by not including remote communication routing addresses or information that would enable sex offenders to contact each other on the individual public Web

site postings of registrants, but including on the Web sites a function by which members of the public may enter, e.g., an e-mail address or phone number and receive an answer whether the specified address or number has been registered as that of a sex offender. In the case of a concerned parent as described above, for example, this could enable the parent to ascertain that the e-mail address of an individual attempting to communicate through the Internet with his or her child is the address of a sex offender, but without providing sex offenders access to listings showing the e-mail addresses of other persons who may share their dispositions to commit sexual crimes.

Jurisdictions are accordingly permitted and encouraged to provide public access to remote communication address information included in the sex offender registries, in the form described above, i.e., a function that allows checking whether specified addresses are included in the registries as the addresses of sex offenders. The registry management and Web site software that the Justice Department is developing pursuant to SORNA section 123 will include software for such a Web site function.

Other Provisions

The final three subsections in section 118 contain additional Web site specifications as follows:

Subsection (d) requires that sites ''include, to the extent practicable, links to sex offender safety and education resources.''

Subsection (e) requires that sites ''include instructions on how to seek correction of information that an individual contends is erroneous.'' A jurisdiction could comply with this requirement, for example, by including on its Web site information identifying the jurisdiction's agency responsible for correcting erroneous information, and advising persons that they can contact this agency if they believe that information on the site is erroneous.

Subsection (f) requires that sites include ''a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address,'' and further provides that the warning ''shall note that any such action could result in civil or criminal penalties.''

B. Community Notification and Targeted Disclosures

Section 121(b) of SORNA states that ''immediately after a sex offender registers or updates a registration * * * the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender'' must be provided to various specified entities and individuals. The requirement that the information must be provided to the specified recipients ''immediately'' should be understood to mean that it must be provided within three business days. Cf. SORNA sections 113(b)(2), 117(a) (equating within three business days and ''immediately'' in relation to initial registration). The requirement that the information be provided immediately is qualified by section 121(c), which provides that recipients described in section 121(b)(6)–(7)—i.e., volunteer organizations in which contacts with minors or other vulnerable individuals might occur, and any organization, company, or individual who requests notification—''may opt to receive the notification * * * no less frequently than once every five business days.''

These requirements will be discussed in turn in relation to two groups of recipients—a group of four types of recipients that require special treatment, followed by suggestions for a uniform approach in relation to the remaining types of recipients. The four types that require special treatment are as follows:

- *National Databases:* Section 121(b)(1) states that the information is to be provided to ''[t]he Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.'' The National Sex Offender Registry (NSOR) is a national database maintained by the Federal Bureau of Investigation (FBI), which compiles information from the registration jurisdictions' sex offender registries and makes it available to criminal justice agencies on a nationwide basis. The current statutory basis for NSOR appears in SORNA section 119(a). The statute refers to the Attorney General including the information submitted by jurisdictions in NSOR ''or other appropriate databases'' because some types of registry information described in SORNA section 114, such as criminal history information, may be maintained by the FBI in other databases rather than directly in the NSOR database. In addition, the United States Marshals Service, which is the lead federal agency in investigating registration violations by sex offenders and assisting jurisdictions in enforcing their registration requirements, may establish an additional national database or databases to help in detecting, investigating, and apprehending sex offenders who violate registration requirements. Jurisdictions accordingly can implement the requirement of section 121(b)(1) by submitting to the FBI within three business days the types of registry information that the FBI includes in NSOR or other national databases, and by submitting information within the same time frame to other federal agencies (such as the United States Marshals Service) in conformity with any requirements the Department of Justice or the Marshals Service may adopt for this purpose.
- *Law Enforcement and Supervision Agencies:* Section 121(b)(2), in part, identifies as further required recipients ''appropriate law enforcement agencies (including probation agencies, if appropriate) * * * in each area in which the individual resides, is an employee or is a student.'' ''Law enforcement agencies'' should be understood to refer to agencies with criminal investigation or prosecution functions, such as police departments, sheriffs' offices, and district attorneys' offices. ''Probation agencies, if appropriate'' should be understood to refer to all offender supervision agencies that are responsible for a sex offender's supervision. Jurisdictions can implement the requirement of section 121(b)(2) by making registration information available to these agencies within three business days, by any effective means—permissible options include electronic transmission of registration information and provision of online access to registration information. Jurisdictions may define the relevant ''area[s]'' in which a registrant resides, is an employee, or is a student for purposes of section 121(b)(2) in accordance with their own policies, or may avoid the need to have to specify such areas by providing access to sex offender registry information to law enforcement and supervision agencies generally, since doing so makes the information available to recipients in all areas (however defined). The authority under the introductory language in section 121(b) to exempt information from disclosure is not exercised in relation to these recipients with respect to any of the information required to be included in registries under section 114 because law enforcement and supervision agencies need access to complete information about sex offenders to carry out their protective, investigative, prosecutorial, and supervisory functions.
- *Jurisdictions:* Section 121(b)(3) identifies as required recipients ''[e]ach jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which

a change of residence, employment, or student status occurs.'' This is part of a broader group of SORNA provisions concerning the exchange of registration information among jurisdictions and ensuring that all relevant jurisdictions have such information in an up-to-date form. The implementation of section 121(b)(3) and other provisions relating to these matters is discussed in Parts IX and X of these Guidelines.

• *National Child Protection Act Agencies:* Section 121(b)(4) identifies as required recipients ''[a]ny agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).'' The National Child Protection Act (NCPA) provides procedures under which qualified entities (e.g., prospective employers of child care providers) may request an authorized state agency to conduct a criminal history background check to obtain information bearing on an individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. The authorized agency makes a determination whether the individual who is the subject of the background check has been convicted of, or is under indictment for, a crime bearing on the individual's fitness for such responsibilities, and conveys that determination to the qualified entity. Considering the nature of the recipients under section 121(b)(4) and the functions for which they need information about sex offenders, jurisdictions can implement section 121(b)(4) by making available to such agencies—i.e., those authorized to conduct NCPA background checks—within three business days all criminal history information in the registry relevant to the conduct of such background checks.

Beyond the four categories specified above, section 121(b) requires that sex offender registration information be provided to several other types of recipients, as follows:

• Each school and public housing agency in each area in which the sex offender resides, is an employee, or is a student (section 121(b)(2)).

• Social service entities responsible for protecting minors in the child welfare system (section 121(b)(5)).

• Volunteer organizations in which contact with minors or other vulnerable individuals might occur (section 121(b)(6)).

• Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction (section 121(b)(7)).

Implementing the required provision of information about registrants to these entities potentially presents a number of difficulties for jurisdictions, such as problems in identifying and maintaining comprehensive lists of recipients in these categories, keeping those lists up to date, subdividing recipients by ''area'' with respect to the notification under section 121(b)(2), and developing means of transmitting or providing access to the information for the various types of recipients. The objectives of these provisions, however, can be achieved by augmenting public sex offender Web sites to include appropriate notification functions. Specifically, a jurisdiction will be deemed to have satisfied the requirements of these provisions of section 121(b) if it adopts an automated notification system that incorporates substantially the following features:

• The information required to be included on sex offender Web sites, as described in Part VII.A of these Guidelines, is posted on the jurisdiction's sex offender Web site within three business days.

• The jurisdiction's sex offender Web site includes a function under which members of the public and organizations can request notification when sex offenders commence residence, employment, or school attendance within zip code or geographic radius areas specified by the requester, where the requester provides an e-mail address to which the notice is to be sent.

• Upon posting on the jurisdiction's sex offender Web site of new residence, employment, or school attendance information for a sex offender within an area specified by the requester, the system automatically sends an e-mail notice to the requester that identifies the sex offender, thus enabling the requester to access the jurisdiction's Web site and view the new information about the sex offender.

VIII. Where Registration Is Required

Section 113(a) of SORNA provides that a sex offender shall register and keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student. It further provides that, for initial registration purposes only, a sex offender must also register in the jurisdiction in which convicted if it is different from the jurisdiction of residence.

Starting with the last-mentioned requirement—registration in jurisdiction of conviction if different from jurisdiction of residence—in some cases the jurisdiction in which a sex offender is convicted is not the same as the jurisdiction to which the sex offender goes to live immediately following release. For example, a resident of jurisdiction A is convicted for a sex offense in jurisdiction B. After being released following imprisonment or sentenced to probation in jurisdiction B, the sex offender returns immediately to jurisdiction A. Although jurisdiction B is not the sex offender's jurisdiction of residence following his release or sentencing, jurisdiction B as the convicting jurisdiction is in the best position initially to take registration information from the sex offender and to inform him of his registration obligations, as required by SORNA section 117(a), and is likely to be the only jurisdiction in a position to do so within the time frames specified in SORNA sections 113(b) and 117(a)—i.e., before release from imprisonment, or within 3 business days of sentencing for a sex offender with a non-incarcerative sentence. Hence, SORNA section 113(a) provides for initial registration in the jurisdiction of conviction in such cases.

Beyond the special case of initial registration in the conviction jurisdiction where it differs from the residence jurisdiction, section 113(a) requires both registration and keeping the registration current in each jurisdiction where a sex offender resides, is an employee, or is a student. Starting with jurisdictions of residence, this means that a sex offender must initially register in the jurisdiction of residence if it is the jurisdiction of conviction, and must thereafter register in any other jurisdiction in which the sex offender subsequently resides.

The notion of ''residence'' requires definition for this purpose. Requiring registration only where a sex offender has a residence or home in the sense of a fixed abode would be too narrow to achieve SORNA's objective of ''comprehensive'' registration of sex offenders (see section 102), because some sex offenders have no fixed abodes. For example, a sex offender may be homeless, living on the street or moving from shelter to shelter, or a sex offender may live in something that itself moves from place to place, such as a mobile home, trailer, or houseboat. SORNA section 111(13) accordingly defines ''resides'' to mean ''the location of the individual's home or other place where the individual habitually lives.'' This entails that a sex offender must register:

• In any jurisdiction in which he has his home; and

• In any jurisdiction in which he habitually lives (even if he has no home

or fixed address in the jurisdiction, or no home anywhere).

The scope of ''habitually lives'' in this context is not self-explanatory and requires further definition. An overly narrow definition would undermine the objectives of sex offender registration and notification under SORNA. For example, consider the case of a sex offender who nominally has his home in one jurisdiction—e.g., he maintains a mail drop there, or identifies his place of residence for legal purposes as his parents' home, where he visits occasionally—but he lives most of the time with his girlfriend in an adjacent jurisdiction. Registration in the nominal home jurisdiction alone in such a case would mean that the registration information is not informative as to where the sex offender is actually residing, and hence would not fulfill the public safety objectives of tracking sex offenders' whereabouts following their release into the community.

''Habitually lives'' accordingly should be understood to include places in which the sex offender lives with some regularity, and with reference to where the sex offender actually lives, not just in terms of what he would choose to characterize as his home address or place of residence for self-interested reasons. The specific interpretation of this element of ''residence'' these Guidelines adopt is that a sex offender habitually lives in the relevant sense in any place in which the sex offender lives for at least 30 days. Hence, a jurisdiction must require a sex offender to register in the jurisdiction as a resident under SORNA if the sex offender has a home in the jurisdiction, or if the sex offender lives in the jurisdiction for at least 30 days. Jurisdictions may choose how the 30-day requirement is satisfied (e.g., 30 consecutive days, 30 nonconsecutive days over a 45-day period, or 30 nonconsecutive days within a calendar year).

SORNA also requires sex offenders to register and keep the registration current in any jurisdiction in which the sex offender is an employee. Hence, a sex offender who resides in jurisdiction A and commutes to work in an adjacent jurisdiction B must register and keep the registration current in both jurisdictions—in jurisdiction A as a resident, and in jurisdiction B as an employee. SORNA section 111(12) defines ''employee'' for this purpose to include ''an individual who is self-employed or works for any other entity, whether compensated or not.'' As with residence, the SORNA requirement to register in jurisdictions of employment is not limited to sex offenders who have fixed places of employment or definite employment addresses. For example, consider a person residing in jurisdiction A who works out of his home as a handyman, regularly doing repair or home-improvement work at other people's houses both in jurisdiction A and in an adjacent jurisdiction B. Since the sex offender works in both jurisdictions, he must register in jurisdiction B as well as jurisdiction A.

The implementation measure for these SORNA requirements is for jurisdictions to require sex offenders who are employed in the jurisdiction, as described above, to register in the jurisdiction. To the extent that a sex offender has some employment-related presence in a jurisdiction, but does not have a fixed place of employment or regularly work within the jurisdiction, line drawing questions will arise, and jurisdictions may resolve these questions based on their own judgments. For example, if a sex offender who is a long haul trucker regularly drives through dozens of jurisdictions in the course of his employment, it is not required that all such jurisdictions must make the sex offender register based on his transient employment-related presence, but rather they may treat such cases in accordance with their own policies. (For more about required employment information, see the discussion in Part VI of these Guidelines.)

The final SORNA basis of registration is being a student, which SORNA section 111(11) defines to mean ''an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.'' Hence, for example, a sex offender who resides in jurisdiction A, and is enrolled in a college in an adjacent jurisdiction B to which he commutes for classes, must be required to register in jurisdiction B as well as jurisdiction A. School enrollment or attendance in this context should be understood as referring to attendance at a school in a physical sense. It does not mean that a jurisdiction has to require a sex offender in some distant jurisdiction to register in the jurisdiction based on his taking a correspondence course through the mail with a school in the jurisdiction, or based on his taking courses at the school remotely through the Internet, unless the participation in the educational program also involves some physical attendance at the school in the jurisdiction.

IX. Initial Registration

Under sections 113(b) and 117(a) of SORNA, jurisdictions must normally require that sex offenders be initially registered before release from imprisonment for the registration offense or, in case of a non-imprisonment sentence, within three business days of sentencing for the registration offense. Upon entry of the registration information into the registry, the initial registration jurisdiction must immediately forward the registration information to all other jurisdictions in which the sex offender is required to register. This is required by SORNA section 121(b)(3) (registration information is to be provided immediately to ''[e]ach jurisdiction where the sex offender resides, is an employee, or is a student.''). Hence, for example, if an imprisoned sex offender advises the conviction jurisdiction on initial registration that he will be residing in another jurisdiction following release, or that he will stay in the conviction jurisdiction but will be commuting to work in another jurisdiction, the conviction jurisdiction must notify the expected residence or employment jurisdiction by forwarding to that jurisdiction the sex offender's registration information (including the information about the expected residence or employment in that jurisdiction). The sex offender will then be required to make an in-person registration appearance within three business days of commencing residence or employment in that jurisdiction, as discussed in Part X of these Guidelines.

With respect to sex offenders released from imprisonment, the initial registration procedures must be carried out prior to release from imprisonment. SORNA does not include a specific requirement as to how long before release from imprisonment the initial registration process must be conducted. But jurisdictions are encouraged, as a matter of sound policy, to effect initial registration with ample time in advance whenever possible so that the following can be done before the sex offender is released into the community: (i) Subjecting the registration information provided by the sex offender to any verification the jurisdiction carries out to ensure accuracy (e.g., cross checking with other records), (ii) obtaining any information needed for the registry that must be secured from sources other than the sex offender, (iii) posting of the sex offender's information on the jurisdiction's sex offender Web site, and (iv) effecting other required notifications

and disclosures of information relating to the sex offender.

The specific initial registration procedures required by section 117(a) are as follows:

- Informing the sex offender of his or her duties under SORNA and explaining those duties. (Of course if the jurisdiction adopts registration requirements that encompass but go beyond the SORNA minimum, the sex offender should be informed of the full range of duties, not only those required by SORNA.)
- Requiring the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement.
- Ensuring that the sex offender is registered—i.e., obtaining the required registration information for the sex offender and submitting that information for inclusion in the registry.

SORNA sections 113(d) and 117(b) recognize that the normal initial registration procedure described above will not be feasible in relation to certain special classes of sex offenders, and provides that the Attorney General may prescribe alternative rules for the registration of such sex offenders. The specific problem is one of timing; it is not always possible to carry out the initial registration procedures for sex offenders who are required to register under SORNA prior to release from imprisonment (or within three days of sentencing) for the registration offense. The situations in which there may be problems of this type, and the rules adopted for those situations, are as follows:

Retroactive Classes

As discussed in Part II.C of these Guidelines, SORNA applies to all sex offenders, including those convicted of their registration offenses prior to the enactment of SORNA or prior to particular jurisdictions' incorporation of the SORNA requirements into their programs. Jurisdictions are specifically required to register such sex offenders if they remain in the system as prisoners, supervisees, or registrants, or if they later reenter the system because of conviction for some other crime (whether or not the new crime is a sex offense).

In some cases this will create no difficulty for registering these sex offenders in conformity with the normal SORNA registration procedures. For example, suppose that a sex offender is convicted of an offense in the SORNA registration categories in 2005, that the jurisdiction implements SORNA in its registration program in 2008, and that the sex offender is released on completion of imprisonment in 2010. Such a sex offender can be registered prior to release from imprisonment in the same manner as sex offenders convicted following the enactment of SORNA and its implementation by the jurisdiction.

But in other cases this will not be possible, as illustrated by the following examples:

- *Example 1:* A sex offender convicted by a State for an offense in the SORNA registration categories is sentenced to probation, or released on post-imprisonment supervision, in 2005. The sex offender is not registered near the time of sentencing or before release from imprisonment, because the State did not require registration for the offense in question at that time. The State subsequently implements SORNA in 2008, which will include registering such a sex offender. But it is impossible to do so near the time of his sentencing or before his release from imprisonment, because that time is past. Likewise, a person convicted of a sex offense by an Indian tribal court in, e.g., 2005 may have not been registered near the time of sentencing or release because the tribe had not yet established any sex offender registration program at the time. If the person remains under supervision when the tribe implements SORNA, registration will be required by the SORNA standards, but the normal time frame for initial registration under SORNA will have passed some years ago, so registration within that time frame is impossible.
- *Example 2:* A sex offender is required to register for life by a jurisdiction based on a rape conviction in 1995 for which he was released from imprisonment in 2005. The sex offender was initially registered prior to his release from imprisonment on the basis of the jurisdiction's existing law, but the information concerning registration duties he was given at the time of release did not include telling him that he would have to appear periodically in person to verify and update the registration information (as required by SORNA § 116), because the jurisdiction did not have such a requirement at the time. So the sex offender will have to be required to appear periodically for verification and will have to be given new instructions about that as part of the jurisdiction's implementation of SORNA.
- *Example 3:* A sex offender convicted in 1980 for an offense subject to lifetime registration under SORNA is released from imprisonment in 1990 but is not required to register at the time because the jurisdiction had not yet established a sex offender registration program. In 2010, following the jurisdiction's implementation of SORNA, the sex offender reenters the system because of conviction for a robbery. The jurisdiction will need to require the sex offender to register based on his 1980 conviction for a sex offense when he is released from imprisonment for the robbery offense. But it is not possible to carry out the initial registration procedure for the sex offender prior to his release from imprisonment for the registration offense—i.e., the sex offense for which he was convicted in 1980—because that time is past.

With respect to sex offenders with pre-SORNA or pre-SORNA-implementation convictions who remain in the prisoner, supervision, or registered sex offender populations at the time of implementation—illustrated by the examples in the first and second bullets above—jurisdictions should endeavor to register them in conformity with SORNA as quickly as possible, including fully instructing them about the SORNA requirements, obtaining signed acknowledgments of such instructions, and obtaining and entering into the registry all information about them required under SORNA. But it is recognized that this may entail newly registering or re-registering a large number of sex offenders in the existing sex offender population, and that it may not be feasible for a jurisdiction to do so immediately. Jurisdictions are accordingly authorized to phase in SORNA registration for such sex offenders in conformity with the appearance schedule of SORNA section 116. In other words, sex offenders in these existing sex offender populations who cannot be registered within the normal SORNA time frame (i.e., before release from imprisonment or within three business days of sentencing for the registration offense) must be registered by the jurisdiction when it implements the SORNA requirements in its system within a year for sex offenders who satisfy the tier I criteria, within six months for sex offenders who satisfy the tier II criteria, and within three months for sex offenders who satisfy the tier III criteria. If a jurisdiction believes that it is not feasible for the jurisdiction to fully register the existing sex offender population in conformity with SORNA within these time frames, the jurisdiction should inform the SMART Office of the difficulty, and the SMART Office will consider whether an extension of time for implementation of SORNA under section 124(b) is warranted on that basis.

In cases in which a sex offender reenters the system based on conviction of some other offense—illustrated by the third example above—and is sentenced or released from imprisonment following the jurisdiction's implementation of SORNA, the normal SORNA initial registration procedures and timing requirements will apply, but with the new offense substituting for the predicate registration offense as the basis for the time frame. In other words, such a sex offender must be initially registered in the manner specified in SORNA section 117(a) prior to release

from imprisonment for the new offense that brought him back into the system, or within three business days of sentencing for the new offense in case of a non-incarcerative sentence.

Federal and Military Sex Offenders

There is no separate federal registration program for sex offenders required to register under SORNA who are released from federal or military custody. Rather, such sex offenders are integrated into the sex offender registration programs of the States and other (non-federal) jurisdictions following their release. Provisions of federal law, appearing in 18 U.S.C. 4042(c) and section 115(a)(8)(C) of Public Law 105–119, require federal and military correctional and supervision personnel to notify the receiving jurisdiction's authorities concerning the release to their areas of such sex offenders so that this integration can be effected. Moreover, these sex offenders are required to comply with the SORNA registration requirements in the jurisdictions in which they reside, are employed, or attend school as mandatory conditions of their federal supervision, as provided in 18 U.S.C. 3563(a)(8), 3583(d), 4209(a), and may be prosecuted under 18 U.S.C. 2250 if they fail to do so.

For example, consider a person convicted of aggravated sexual abuse under 18 U.S.C. 2241, who is released following his completion of the prison term for this offense. As provided in 18 U.S.C. 4042(c), the Federal Bureau of Prisons is required to inform the sex offender prior to his release that he must register as required by SORNA, and must notify law enforcement and registration authorities in the jurisdiction in which the sex offender will reside following release.

Situations of this type are in principle the same as those in which a sex offender enters a jurisdiction to reside following conviction in another (non-federal) jurisdiction—see Part X of these Guidelines for discussion—except that the federal authorities will not have registered the sex offender in the same manner that a non-federal jurisdiction would. The jurisdiction to which such a sex offender goes to reside following release from federal custody (or after sentencing for a federal offense, in case of a non-incarcerative sentence) accordingly must require the sex offender to appear in person to register within three business days, and must carry out the procedure described in SORNA section 117(a) when the sex offender appears for that purpose. The jurisdiction must also immediately forward the registration information for the sex offender to any other jurisdiction in which the sex offender is required to register under SORNA (e.g., on the basis of employment), as required by SORNA section 121(b)(3). If federal authorities notify the jurisdiction concerning the release of a sex offender to the jurisdiction, but the sex offender fails to appear and register as required, the jurisdiction must proceed as discussed in Part XIII of these Guidelines for cases involving possible violations of registration requirements.

Sex Offenders Incarcerated in Non-Conviction Jurisdictions

A sex offender sentenced to imprisonment may serve his or her prison term in a facility outside of the convicting jurisdiction. For example, an Indian tribe may not have its own correctional facility and may accordingly lease bed space from a county jail. Or a State may lease prison space in a facility in an adjacent State, so that some of its offenders serve their prison terms in the other State's facilities. In such a case, the jurisdiction incarcerating the sex offender may be neither the jurisdiction of conviction nor the jurisdiction of expected residence following release. But it is likely to be in the best position to initially take the required registration information from the sex offender and to instruct the sex offender concerning registration obligations, while the jurisdiction that convicted the sex offender may be in no position to do so prior to the sex offender's release, because the facility in which the sex offender is incarcerated is in another jurisdiction.

In such cases, the jurisdiction incarcerating the sex offender must carry out the initial registration procedure described in SORNA section 117(a) prior to releasing the sex offender and must immediately forward the registration information for the sex offender to any other jurisdiction in which the sex offender is required to register under SORNA (e.g., on the basis of expected residence), as required by SORNA section 121(b)(3).

Registrants Based on Foreign Convictions

Persons with foreign sex offense convictions are often required to register under SORNA, as discussed in Part IV.B of these Guidelines. Section 128 of SORNA directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing the relevant jurisdictions about persons entering the United States who are required to register under SORNA. Persons with foreign sex offense convictions provide an additional class who cannot be initially registered within the normal SORNA time frame. Since they are convicted and imprisoned in a foreign country, no domestic jurisdiction would normally be in a position to register them prior to their release from imprisonment (or near the time of sentencing in case of a non-incarcerative sentence).

The procedure for initial registration of such persons is logically the same as that for other analogous classes discussed above: A jurisdiction must require a person with a foreign conviction for which registration is required under SORNA to appear in person to register within three business days of entering the jurisdiction to reside or commencing employment or school attendance in the jurisdiction. If the sex offender has not previously been registered by another jurisdiction, the jurisdiction must carry out the initial registration procedure as provided in SORNA section 117(a) when the sex offender appears. The jurisdiction must immediately forward the registration information to any other jurisdiction in which the sex offender is required to register under SORNA. If a jurisdiction is notified, by federal authorities pursuant to SORNA section 128 or otherwise, that a sex offender is entering the United States and is expected to be locating in the jurisdiction, but the sex offender fails to appear and register as required, the jurisdiction must follow the procedures discussed in Part XIII of these guidelines for cases involving possible violations of registration requirements.

X. Keeping the Registration Current

There are a number of provisions in SORNA that are designed to ensure that changes in registration information are promptly reported, and that the registration information is kept fully up to date in all jurisdictions in which the sex offender is required to register:

- Section 113(a) provides that a sex offender must keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student.
- Section 113(c) provides that a sex offender must, not later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction in which the sex offender is required to register and inform that jurisdiction of all changes in the information required for that sex offender in the sex offender registry. It further provides that that information must immediately be provided to all

other jurisdictions in which the sex offender is required to register.

• Section 119(b) provides that updated information about a sex offender must be immediately transmitted by electronic forwarding to all relevant jurisdictions.

• Section 121(b)(3) provides that immediately after a sex offender registers or updates a registration, the information in the registry (other than any exempted from disclosure by the Attorney General) must be provided to each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.

• Section 128 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing relevant jurisdictions about persons entering the United States who are required to register under SORNA.

Implementation of these provisions requires the definition of implementation measures that can be carried out by the individual jurisdictions, whose collective effect will be to realize these provisions' objectives. The remainder of this Part of these Guidelines details the required implementation measures.

A. Changes of Name, Residence, Employment, or School Attendance

The in-person appearance requirements of section 113(c) described above serve to ensure—in connection with the most substantial types of changes bearing on the identification or location of sex offenders (name, residence, employment, school attendance)—that there will be an opportunity to obtain all required registration information from sex offenders in an up to date form, including direct meetings for this purpose between the sex offenders and the personnel or agencies who will be responsible for their registration. The purposes served by in-person appearances under the SORNA standards are further explained in Part XI of these Guidelines, in relation to the periodic in-person appearance requirements of section 116.

The required implementation measures for the appearances required by section 113(c)—and other information updating/sharing and enforcement provisions under SORNA as they bear on such appearances—are as follows:

• Residence Jurisdictions: Each jurisdiction must require a sex offender who enters the jurisdiction to reside, or who is registered in the jurisdiction as a resident and changes his or her name or place of residence within the jurisdiction, to appear in person to register or update the registration within three business days. Also, each jurisdiction in which a sex offender is registered as a resident must:

○ Require the sex offender to inform the jurisdiction if the sex offender intends to commence residence, employment, or school attendance in another jurisdiction; and

○ If so informed by the sex offender, notify that other jurisdiction by transmitting the sex offender's registration information (including the information concerning the sex offender's expected residence, employment, or school attendance in that jurisdiction) immediately by electronic forwarding to that jurisdiction.

• Employment Jurisdictions: Each jurisdiction must require a sex offender who commences employment in the jurisdiction, or changes employer or place of employment in the jurisdiction, to appear in person to register or update the registration within three business days.

• School Jurisdictions: Each jurisdiction must require a sex offender who commences school attendance in the jurisdiction, or changes the school attended or place of school attendance in the jurisdiction, to appear in person to register or update the registration within three business days.

• Information Sharing: In all cases in which a sex offender makes an in-person appearance in a jurisdiction and registers or updates a registration as described above, the jurisdiction must immediately transmit by electronic forwarding the registration information for the sex offender (including any updated information concerning name, residence, employment, or school attendance provided in the appearance) to all other jurisdictions in which:

○ The sex offender is or will be required to register as a resident, employee, or student; or

○ The sex offender was required to register as a resident, employee, or student until the time of a change of residence, employment, or student status reported in the appearance, even if the sex offender may no longer be required to register in that jurisdiction in light of the change of residence, employment, or student status.

• Failure to Appear: If a jurisdiction is notified that a sex offender is expected to commence residence, employment, or school attendance in the jurisdiction, but the sex offender fails to appear for registration as required, the jurisdiction must inform the jurisdiction that provided the notification that the sex offender failed to appear, and must follow the procedures for cases involving possible violations of registration requirements, as discussed in Part XIII of these guidelines.

B. Changes in Other Registration Information

By incorporating the foregoing procedures into their registration programs, jurisdictions can implement the SORNA requirements for keeping the registration current in relation to name, residence, employment, and school attendance information through in-person appearances. The registration information that sex offenders are required to provide under SORNA section 114, however, as discussed in Part VI of these Guidelines, includes as well information about vehicles owned or operated by sex offenders, temporary lodging information, and information about designations that sex offenders use for self-identification or routing purposes in Internet communications or postings or telephonic communications. If changes occur in these types of information, the changes may eventually be reported as part of the periodic verification appearances required by section 116 of SORNA, as discussed in Part XI of these Guidelines. But the registration information may become in some respects seriously out of date if the verification appearances are relied on exclusively for this purpose.

For example, if a sex offender is on a yearly appearance schedule, the sex offender's motor vehicle information may be a year out of date by the time the sex offender reports at the next appearance that he has acquired a new vehicle. Temporary lodging at places away from a sex offender's residence might not be reported until long after the time when the sex offender was at the temporary location. Likewise, given the ease with which Internet addresses and identifiers and telephone numbers are added, dropped, or changed, the value of requiring information about them from registrants could be seriously undermined if they were only required to report changes periodically in the context of general verification meetings.

Hence, an additional implementation measure is necessary to keep registrations current with respect to these informational items:

• Each jurisdiction in which a sex offender is registered as a resident must require the sex offender to report immediately changes in vehicle information, lodging of seven days or

more duration, and changes in designations used for self-identification or routing in Internet communications or postings or telephonic communications, and must immediately transmit such changes in the registration information by electronic forwarding to all other jurisdictions in which the sex offender is required to register.

• In addition, with respect to lodging of seven days or more duration, the residence jurisdiction must immediately transmit the information by electronic forwarding to the jurisdiction in which the temporary lodging by the sex offender takes place (if different from the residence jurisdiction), even if that is not a jurisdiction in which the sex offender is required to register.

C. International Travel

A sex offender who moves to a foreign country may pass beyond the reach of U.S. jurisdictions and hence may not be subject to any enforceable registration requirement under U.S. law unless and until he or she returns to the United States. But effective tracking of such sex offenders remains a matter of concern to the United States and its domestic jurisdictions, and some measures relating to them are necessary for implementation of SORNA.

Relevant provisions include SORNA section 128, which directs the Attorney General to establish a system for informing domestic jurisdictions about persons entering the United States who are required to register under SORNA, and 18 U.S.C. 2250(a)(2)(B), which makes it a federal crime for a sex offender to travel in foreign commerce and knowingly fail to register or update a registration as required by SORNA. To carry out its responsibilities under these provisions, the Department of Justice needs to know if sex offenders registered in U.S. jurisdictions are leaving the country, since such offenders will be required to resume registration if they later return to the United States to live, work, or attend school while still within their registration periods. Also, both for sex offenders who are convicted in the United States and then go abroad, and for sex offenders who are initially convicted in other countries, identifying such sex offenders when they enter or reenter the United States will require cooperative efforts between the Department of Justice (including the United States Marshals Service) and agencies of foreign countries. As a necessary part of such cooperative activities, foreign authorities may expect U.S. authorities to inform them about sex offenders coming to their jurisdictions from the United States, in return for their advising the United States about sex offenders coming to the United States from their jurisdictions. For this reason as well, federal authorities in the United States will need information about sex offenders leaving domestic jurisdictions to go abroad in order to effectively carry out the requirements of SORNA section 128 and enforce 18 U.S.C. 2250(a)(2)(B).

International travel also implicates the requirement of SORNA section 113(a) that sex offenders keep the registration current in all jurisdictions in which they reside, work, or attend school. If a sex offender simply leaves the country and does not inform the jurisdiction or jurisdictions in which he has been registered, then the requirement to keep the registration current will not have been fulfilled. Rather, the registry information in the domestic jurisdictions will show that the sex offender is residing in the jurisdiction (or present as an employee or student) when that is no longer the case.

In addition, a sex offender who goes abroad may remain subject in some respects to U.S. jurisdiction. For example, a sex offender may be leaving to live on an overseas U.S. military base, as a servicemember, dependent, or employee, or to work as or for a U.S. military contractor in another country. In such cases, notification about the individual's status as a sex offender and intended activities abroad is of interest to federal authorities, because the presence of sex offenders implicates the same public safety concerns in relation to communities abroad for which the United States has responsibility (such as U.S. military base communities in foreign countries) as it does in relation to communities within the United States.

The following requirements accordingly apply in relation to sex offenders who leave the United States:

• Each jurisdiction in which a sex offender is registered as a resident must require the sex offender to inform the jurisdiction if the sex offender intends to commence residence, employment, or school attendance outside of the United States.

If so informed by the sex offender, the jurisdiction must: (i) Notify all other jurisdictions in which the sex offender is required to register through immediate electronic forwarding of the sex offender's registration information (including the information concerning the sex offender's expected residence, employment, or school attendance outside of the United States), and (ii) notify the United States Marshals Service and update the sex offender's registration information in the national databases pursuant to the procedures under SORNA section 121(b)(1).

XI. Verification/Appearance Requirements

Section 116 of SORNA States that ''a sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than'': (i) Each year for a tier I sex offender, (ii) every six months for a tier II sex offender, and (iii) every three months for a tier III sex offender. Jurisdictions accordingly must require such periodic appearances by sex offenders who reside or are employees or students in the jurisdiction, since sex offenders must register in the jurisdictions of their residence, employment, and school attendance, as explained in Part VIII of these Guidelines. As with other SORNA requirements, jurisdictions may require in-person appearances by sex offenders with greater frequency than the minimum required by section 116.

The in-person appearance requirements of section 116 further the purposes of sex offender registration and notification in a number of ways. A sex offender's physical appearance, like that of any other person, will change in the course of time. The in-person appearance requirements provide reasonably frequent opportunities to obtain a photograph of the sex offender and a physical description that reflects his or her current appearance, types of registration information that are required by section 114(b)(1), (4). The in-person appearances further provide an opportunity to review with the sex offender the full range of information in the registry, and to obtain from the sex offender information about any changes in the registration information or new information that has not been reported since the initial registration or the last appearance.

Beyond these functions of directly helping to ensure the accuracy and currency of the registration information, the appearance requirement ensures periodic face-to-face encounters between the sex offender and persons responsible for his or her registration. For example, if the appearance requirement is implemented by a jurisdiction to require that registrants report to local police departments or sheriffs' offices, these meetings help to familiarize law enforcement personnel with the sex offenders in their areas. This may contribute to the effective discharge of the local law enforcement agency's protective and investigative

functions in relation to these sex offenders, and help to ensure that the agency's responsibility to track these sex offenders is taken seriously and consistently enforced. Likewise, from the perspective of the sex offender, periodic in-person encounters with officials responsible for their monitoring may help to impress on them with greater vividness than remote communications that their identities, locations, and past criminal conduct are known to the authorities. Hence, there is a reduced likelihood of their avoiding detection and apprehension if they reoffend, and this may help them to resist the temptation to reoffend.

As long as the appearances involve meetings between the sex offenders and officials who can carry out the required functions of the meetings, the specific arrangements for such appearances and the officials who will conduct them are matters that jurisdictions may determine in their discretion. For example, jurisdictions may require sex offenders to report to local law enforcement offices for this purpose, or may combine the appearances with meetings between sex offenders and their supervision officers if they are under supervision, or may have law enforcement, supervision, or registration personnel visit with sex offenders at their homes or meet with them at other arranged locations.

The specific requirements for the conduct of such appearances are as follows:

- Appearances must be conducted at least annually for sex offenders satisfying the ''tier I'' criteria, at least semiannually for sex offenders satisfying the ''tier II'' criteria, and at least quarterly for sex offenders satisfying the ''tier III'' criteria. (The ''tier'' classifications and what they entail are explained in Part V of these Guidelines.)
- The sex offender must allow a current photograph to be taken. This does not mean that jurisdictions must require officials conducting these meetings to take a new photograph at every appearance and enter the new photograph into the registry. Where the official sees that the sex offender's appearance has not changed significantly from a photograph in the registry, it may be concluded that the existing photograph remains sufficiently current and the taking of a new photograph does not have to be required in such circumstances.
- The sex offender must be required to review the existing information in the registry that is within his or her knowledge, to correct any item that has changed or is otherwise inaccurate, and to provide any new information there may be in the required registration information categories.
- Upon entry of the updated information into the registry, it must be immediately transmitted by electronic forwarding to all other jurisdictions: (i) In which the sex offender is or will be required to register as a resident, employee, or student, or (ii) in which the sex offender was required to register as a resident, employee, or student until the time of a change of residence, employment, or student status reported in the appearance, even if the sex offender may no longer be required to register in that jurisdiction in light of the updated information. (This is necessary to carry out information sharing requirements appearing in SORNA sections 119(b) and 121(b)(3).)

Like other SORNA registration requirements, the in-person appearance requirements of section 116 are only minimum standards. They do not limit, and are not meant to discourage, adoption by jurisdictions of more extensive or additional measures for verifying registration information. Thus, jurisdictions may require verification of registration information with greater frequency than that required by section 116, and may wish to include in their systems additional means of verification for registration information, such as mailing address verification forms to the registered residence address that the sex offender is required to sign and return, and cross-checking information provided by the sex offender for inclusion in the registry against other records systems. Section 631 of the Adam Walsh Act (Pub. L. 109–248) authorizes a separate grant program to assist in residence address verification for sex offenders. Additional guidance will be provided concerning application for grants under that program if funding for the program becomes available.

XII. Duration of Registration

Section 115(a) of SORNA specifies the minimum required duration of sex offender registration. It generally requires that sex offenders keep the registration current for 15 years in the case of a tier I sex offender, for 25 years in the case of a tier II sex offender, and for the life of the sex offender in the case of a tier III sex offender, ''excluding any time the sex offender is in custody or civilly committed.'' (The tier classifications and their import are explained in Part V of these Guidelines.) The required registration period begins to run upon release from custody for a sex offender sentenced to incarceration for the registration offense, and begins to run at the time of sentencing for a sex offender who receives a nonincarcerative sentence for the offense.

The proviso relating to custody or civil commitment reflects the fact that the SORNA procedures for keeping up the registration—including appearances to report changes of residence or other key information under section 113(c), and periodic appearances for verification under section 116—generally presuppose the case of a sex offender who is free in the community. Where a sex offender is confined, the public is protected against the risk of his reoffending in a more direct way, and more certain means are available for tracking his whereabouts. Hence, SORNA does not require that jurisdictions apply the registration procedures applicable to sex offenders in the community during periods in which a sex offender is in custody or civilly committed.

Subsection (b) of section 115 provides that the registration period shall be reduced by 5 years for a tier I sex offender who has maintained a ''clean record'' for 10 years, and provides that registration be terminated for a tier III sex offender required to register on the basis of a juvenile delinquency adjudication if the sex offender has maintained a ''clean record'' for 25 years. (The circumstances in which registration is required on the basis of juvenile delinquency adjudications are explained in Part IV.A of these Guidelines.) Subsection (b) does not provide for the reduction of the required 25-year duration of registration for tier II sex offenders, or for the reduction of the required lifetime registration for tier III sex offenders required to register on the basis of adult convictions.

The specific requirements under section 115(b) to satisfy the ''clean record'' precondition for reduction of the registration period are as follows:

- The sex offender must not be convicted of any sex offense for which imprisonment for more than one year may be imposed (section 115(b)(1)(A)).
- The sex offender must not be convicted of any sex offense (section 115(b)(1)(B)). In contrast to section 115(b)(1)(A), section 115(b)(1)(B) is not limited to cases in which the offense is one potentially punishable by imprisonment for more than a year. Hence, conviction for a sex offense prevents satisfaction of the ''clean record'' requirement, even if the maximum penalty for the offense is less than a year.
- The sex offender must successfully complete any periods of supervised release, probation, and parole (section 115(b)(1)(C)). The requirement of ''successfully'' completing periods of

supervision means completing these periods without revocation.

• The sex offender must successfully complete an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General (section 115(b)(1)(D)). Jurisdictions may make their own decisions concerning the design of such treatment programs, and jurisdictions may choose the criteria to be applied in determining whether a sex offender has ''successfully'' completed a treatment program, which may involve relying on the professional judgment of the persons who conduct or oversee the treatment program.

XIII. Enforcement of Registration Requirements

This final part of the Guidelines discusses enforcement of registration requirements under the SORNA provisions. It initially discusses the penalties for registration violations under SORNA, and then the practical procedures for investigating and dealing with such violations.

SORNA contemplates that substantial criminal penalties will be available for registration violations at the state, local, and federal levels. Section 113(e) of SORNA requires jurisdictions (other than Indian tribes) to provide a criminal penalty that includes a maximum term of imprisonment greater than one year for the failure of a sex offender to comply with the SORNA requirements. Hence, a jurisdiction's implementation of SORNA includes having a failure-to-register offense for which the maximum authorized term of imprisonment exceeds a year. (Indian tribes are not included in this requirement because tribal court jurisdiction does not extend to imposing terms of imprisonment exceeding a year.) Section 141(a) of SORNA enacted 18 U.S.C. 2250, a new federal failure-to-register offense, which provides federal criminal penalties of up to 10 years of imprisonment for sex offenders required to register under SORNA who knowingly fail to register or update a registration as required where circumstances supporting federal jurisdiction exist, such as interstate or international travel by a sex offender, or conviction of a federal sex offense for which registration is required. Federal sex offenders are also required to comply with the SORNA registration requirements as mandatory conditions of their federal probation, supervised release, or parole, as provided pursuant to amendments adopted by section 141(d)–(e), (j) of SORNA.

In terms of practical enforcement measures, SORNA section 122 requires that an appropriate official notify the Attorney General and appropriate law enforcement agencies of failures by sex offenders to comply with registration requirements, and that such registration violations must be reflected in the registries. The section further provides that the official, the Attorney General, and each such law enforcement agency are to take any appropriate action to ensure compliance. Complementary measures for federal enforcement appear in section 142, which directs the Attorney General to use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate registration requirements. (Also, SORNA section 623 authorizes grants by the Attorney General to States, local governments, tribal governments, and other public and private entities to assist in enforcing sex offender registration requirements—additional guidance will be provided concerning application for grants under this provision if funding is made available for this program.)

Translating the requirements of section 122 into practical procedures that will ensure effective enforcement of sex offender registration requires further definition. Jurisdictions can implement the requirements of section 122 by adopting the following procedures:

• Information may be received by a jurisdiction indicating that a sex offender has absconded—i.e., has not registered at all, or has moved to some unknown place other than the registered place of residence. For example, a sex offender may fail to make a scheduled appearance for periodic verification of registration information in his jurisdiction of residence as required by SORNA section 115, or may fail to return an address verification form mailed to the registered address in a jurisdiction that uses that verification procedure. Or a jurisdiction may receive notice from some other jurisdiction providing grounds to expect that a sex offender will be coming to live in the jurisdiction—such as notice that a sex offender will be moving to the jurisdiction from a jurisdiction in which he was previously registered, or notice from federal authorities about the expected arrival in the jurisdiction of a released federal sex offender or sex offender entering the United States from abroad—but the sex offender then fails to appear and register as required. Or a jurisdiction may notify another jurisdiction, based on information provided by a sex offender, that the sex offender will be relocating to the other jurisdiction, but the supposed destination jurisdiction thereafter informs the original registration jurisdiction that the sex offender has failed to appear and register.

• When such information is received by a jurisdiction indicating that a sex offender may have absconded, whether one registered in the jurisdiction or expected to arrive from another jurisdiction, an effort must be made to determine whether the sex offender has actually absconded. If non-law-enforcement registration personnel cannot determine this, then a law enforcement agency with jurisdiction to investigate the matter must be notified. Also, if the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the authorities that provided the notification must be informed that the sex offender has failed to appear and register.

• If a jurisdiction receives information indicating that a sex offender may have absconded, as described in the preceding bullets, and takes the measures described therein but cannot locate the sex offender, then the jurisdiction must take the following steps:

○ The information in the registry must be revised to reflect that the sex offender is an absconder or unlocatable.

○ A warrant must be sought for the sex offender's arrest, if the legal requirements for doing so are satisfied.

○ The United States Marshals Service, which is the lead federal agency for investigating sex offender registration violations, must be notified. Also, the jurisdiction must update the National Sex Offender Registry to reflect the sex offender's status as an absconder or unlocatable and enter the sex offender into the National Crime Information Center Wanted Person File (assuming issuance of a warrant meeting the requirement for entry into that file).

The foregoing procedures must be adopted for possible absconder cases to implement SORNA section 122. In addition, a jurisdiction's policies must require appropriate follow-up measures when information is received indicating violation of the requirement to register in jurisdictions of employment or school attendance, whether or not a violation of the requirement to register in jurisdictions of residence is implicated. Specifically, a jurisdiction may receive information indicating that a sex offender may be employed or attending school in the jurisdiction but has not registered as required—for example, failure by the sex offender to appear for a required periodic in-person appearance in the employment or school jurisdiction, as required by SORNA section 116, or failure by a sex

offender to appear and register in the jurisdiction following receipt of notice from another jurisdiction that the sex offender is expected to be commencing employment or school attendance in the jurisdiction. In such cases, an effort must be made to determine whether the sex offender is actually employed or attending school in the jurisdiction but has failed to register. If (non-law enforcement) registration personnel cannot determine this, then a law enforcement agency with jurisdiction to investigate the matter must be notified.

Dated: May 17, 2007.

Alberto R. Gonzalez,

Attorney General.

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Federal Register

Wednesday,
May 30, 2007

Part V

The President

Proclamation 8149—Great Outdoors Month, 2007

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Presidential Documents

Title 3—

The President

Proclamation 8149 of May 25, 2007

Great Outdoors Month, 2007

By the President of the United States of America

A Proclamation

During Great Outdoors Month, we celebrate the rich blessings of our Nation's natural beauty, and we renew our commitment to protecting our environment so that we can leave our children and grandchildren a healthy and flourishing land. This month is also an opportunity to pay tribute to those whose hard work and dedication keep our country's open spaces beautiful and accessible to our citizens.

Through recreational activities such as fishing, skiing, biking, and nature watching, we can teach our young people about the wonders of our Nation's landscapes. Experiencing our Nation's natural splendor contributes to healthier lives for our citizens and a deeper appreciation for the great outdoors.

My Administration is working to protect and conserve our natural wonders for future generations. To keep our National Park System vibrant, we requested the highest increase ever in park operations funding in the FY 2008 Budget and launched the National Parks Centennial Initiative. We are also promoting responsible stewardship and conservation of our air, water, and land. Harmful air pollutants are down more than 10 percent since 2001, but there is more work to be done. Through the ''Twenty in Ten'' plan, my Administration aims to limit greenhouse gas emissions from motor vehicles and reduce America's dependence on oil by cutting our gasoline usage by 20 percent over the next 10 years.

In addition, we have restored, improved, or protected millions of acres of wetlands and enhanced our parks and wildlife refuges. We are also encouraging cooperative conservation, innovation, and new technologies to help ensure America's outdoors remain places where families and friends can learn, exercise, and create meaningful memories.

Countless citizens volunteer their time and talents to protect America's natural resources. By working together with the private and non-profit sectors and the general public, we can help preserve our local parks, lakes, rivers, and working lands. I am grateful for the efforts of all those who work to conserve our Nation's natural wonders, and I encourage citizens to visit takepride.gov to learn about more opportunities to help keep our environment healthy and safe.

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 June 2007 as Great Outdoors Month. I call on all Americans to observe this month with appropriate programs and activities and to take time to experience and enjoy the outdoors.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, 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.

GWBOLD.EPS

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 988/P.L. 110–27

To designate the facility of the United States Postal Service located at 5757 Tilton Avenue in Riverside, California, as the "Lieutenant Todd Jason Bryant Post Office". (May 25, 2007; 121 Stat. 111)

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