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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 17, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 550

RIN 3206–AL09

Locality-Based Comparability Payments and Evacuation Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations finalize the interim regulations that provide the rules for determining an employee's official worksite when he or she teleworks from an alternative worksite during an emergency situation, such as a pandemic health crisis, and permit an agency to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The final regulations revise the interim regulations to clarify that an employee need not have a telework agreement when directed to work from home. These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur.

DATES: The regulations are effective July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Gene Holson by telephone at (202) 606–2858, by fax at (202) 606–0824, or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On August 17, 2006, the Office of Personnel Management (OPM) published interim regulations (71 FR 47692) in 5 CFR parts 531 and 550 concerning pay actions for employees affected by a pandemic health crisis. The interim regulations (1) Clarified the rules for determining an employee's official worksite for the purpose of identifying his or her location-based pay entitlements when the employee teleworks from an alternative worksite during an emergency situation such as a pandemic health crisis and (2) authorized agencies to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from the employee's home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. The 60-day comment period for the interim regulations ended on October 16, 2006. OPM received comments from three Federal agencies.

One agency commented on the use of the term ''critical missions'' in the summary of the interim regulations: ''These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur.'' The commenter noted that ''The National Strategy for Pandemic Influenza'' and ''Federal Preparedness Circular 65'' use the term ''essential functions'' instead of ''critical missions.'' The agency recommended that OPM replace the term ''critical missions'' with ''essential functions'' to ensure consistency in the terminology used in other Federal guidance. We are not making this change. We used ''critical missions'' in the summary accompanying the interim regulations to be consistent with the terminology used in OPM's *Pandemic Influenza* guidance on OPM's Web site at *http://www.opm.gov/pandemic/index.asp.* The term itself is not in the interim or final regulations.

Official Worksite

The same agency also requested clarification of the provision in § 531.605(d)(3), which states that an authorized agency official may make a temporary exception to the requirement that a telework employee must report at least once a week on a regular and recurring basis to the regular worksite in order for the employee to continue receiving the locality rate for the regular worksite. The commenter inquired as to whether there is a time limit on how long a temporary exception under § 531.605(d)(3), may be in effect. There is no such time limit. The intent of § 531.605(d)(3) is to address certain situations where the employee is retaining his or her residence in the commuting area for the regular worksite but is temporarily unable to report to the regular worksite for reasons beyond the employee's control. The fact that an employee may receive lesser pay or benefits if the official worksite is changed to the telework location is not a basis or justification for using this temporary exception. A key consideration is the need to preserve equity between the telework employee and non-telework employees who are working in the same area as the telework location. The temporary exception should generally be used only in cases where (1) the employee is expected to stop teleworking and return to work at the regular worksite in the near future, or (2) the employee is expected to continue teleworking but will be able to report to the regular worksite at least once a week on a regular and recurring basis in the near future. Examples of appropriate temporary situations include: (1) Recovery from an injury or medical condition, or to assist with a family member's recovery from an injury or medical condition; (2) emergency situations that prevent an employee from regularly commuting to the normal worksite, such as a severe weather emergency or a pandemic health crisis; or (3) the employee is away from the area on extended official travel. (See the revised fact sheet, *Official Worksite for Location-Based Pay Purposes*, on OPM's Web site at *http://www.opm.gov/oca/pay/html/Official_Duty_Station.asp.*) The commenter also asked whether the authority to make a temporary exception may be delegated. The regulatory provisions at § 531.605(d)(3) do not restrict an agency's ability to delegate the authority to make such temporary exceptions.

Evacuation Payments

One agency suggested there is too much emphasis on ''pandemic health crisis'' in the regulations and recommended replacing that term with ''emergency situations, such as a pandemic health crisis'' because the agency believes that most emergency situations will be weather-related and

not health-related. In addition, the agency suggested there is no need for the new regulations at § 550.409. The agency recommended deleting § 550.409 and suggested adding the term ''such as a pandemic health crisis'' after ''other reasons'' to the regulations at § 550.401(a). We are not adopting these recommendations. Unlike emergency situations where employees may be ordered to evacuate a designated geographic area (including evacuating their worksites and homes), during a pandemic health crisis employees may likely be ordered to evacuate their worksites to promote ''social distancing'' but not ordered to evacuate their homes. Because of these unique conditions, we believe it is imperative to limit the use of the evacuation payment authority in § 550.409 to a pandemic health crisis.

One agency recommended revising § 550.409(a) to make clear that an agency's authority during a pandemic health crisis to order an employee to evacuate from his or her worksite and perform work from the employee's home includes the situation where the agency and the employee do not have a telework agreement in place at the time the order to evacuate is issued. We agree and have revised § 550.409(a). The agency also recommended that OPM delete the provision in § 550.409(a) which limits an agency's authority to order an employee to perform work from a location other than the employee's home to a location that is ''mutually agreeable to the agency and the employee.'' The agency believes it is impractical to require an agency and an employee to engage in discussions with the intent of reaching an agreement as to where the employee is going to work, especially in the context of an emergency health crisis. We are not adopting this recommendation. During a pandemic health crisis, if an employee does not comply with his or her agency's order to work from home, or the agency and the employee cannot agree on an alternative work location, the agency may disapprove the employee's evacuation payments. Under these circumstances, the employee may be required to use his or her accrued annual leave (*i.e.*, ''enforced leave''), may be furloughed, or disciplined, as appropriate.

One agency noted that the issue of temporary promotion pay is not clearly addressed in the regulations. Under § 550.409(a), evacuated employees may be assigned to perform any work necessary or required to be performed without regard to his or her grade, level, or title. The regulations also require agencies to compute evacuation payments under § 550.404, which states that evacuation payments must be based on the rate of pay to which the employee was entitled immediately before the issuance of the order to evacuate. The commenter recommended revising the regulations to clarify that evacuation payments must be based on the rate of pay to which the employee was entitled immediately before the issuance of the order to evacuate, notwithstanding an agency's policy or collective bargaining agreement regarding an employee's entitlement to a noncompetitive temporary promotion when the employee is required to perform higher-level duties during the period of evacuation. We are not adopting this recommendation. While there may be circumstances in which it will be necessary to temporarily suspend certain provisions of an agency policy or a collective bargaining agreement in an emergency, it would be inappropriate to provide such a broad authorization to do so. The decision to take such action must be made on a case-by-case basis taking into consideration the facts and circumstances that exist at that time.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 550

Administrative practice and procedure, Claims, Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the interim rule amending 5 CFR parts 531 and 550, which was published at 71 FR 47692 on August 17, 2006, is adopted as final with the following change:

PART 550—PAY ADMINISTRATION (GENERAL)

■ 1. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR parts 1959–1963, p. 502.

■ 2. Amend § 550.409 by revising the first sentence of paragraph (a) to read as follows:

§ 550.409 Evacuation payments during a pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued.* * * * * * * * *

[FR Doc. E7–11584 Filed 6–14–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM379 Special Conditions No. 25–07–12–SC]

Special Conditions: Boeing Model 777–300ER Airplane; Lithium Ion Battery Installation

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 777–300ER airplane. This airplane as modified by the Boeing Commercial Airplane Company will have a novel or unusual design feature associated with the use of lithium ion battery technology in on-board systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 1, 2007. We must receive your comments by July 30, 2007.

ADDRESSES: Comments on this rule may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM379, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM379. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, these special conditions are identical to those issued for another model of airplane; those special conditions were subjected to prior notice and public comment. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference as specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 15, 2006, Boeing Commercial Airplane Group, Seattle, Washington, applied for an amended type certificate to install a new Panasonic eX2 in-flight entertainment (IFE) system in a Boeing 777–300ER airplane. The Boeing Model 777–300ER airplane is a large twin engine airplane with a maximum passenger capacity of 550.

The regulations do not address the novel and unusual design features associated with the installation of an IFE system that uses lithium ion battery technology.

Type Certification Basis

Under the provisions of § 21.101 Boeing Commercial Airplane Group must show that the Boeing Model 777–300ER, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in T00001SE are Title 14 Code of Federal Regulations (CFR), part 25, as amended by Amendments 25–1 through 25–98, except for §§ 25.831(a) and (g) and 25.841(a), which remain at Amendment 25–86, and § 25.853(d)(3), which remains at Amendment 25–82. Section 25.1517 is not part of the TC. Refer to Type Certificate No. T00001SE, as applicable, for a complete description of the certification basis for this model, including certain special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 777–300ER because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–300ER must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19 and § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Boeing Commercial Airplane Group proposes using lithium ion battery technology for the IFE system in this airplane. High capacity, rechargeable lithium ion batteries are a novel or unusual design feature in transport category airplanes. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions for the 777–300ER contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Lithium ion batteries have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large transport category airplanes. The FAA is adopting these special conditions to require that (1) all characteristics of the lithium ion battery and its installation that could affect safe operation of the 777–300ER are addressed, and (2) appropriate maintenance requirements are established to ensure availability of electrical power from the batteries when needed.

Background

The current regulations governing installation of batteries in large transport category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February, 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures. This led to additional rulemaking affecting large transport category airplanes as well a small airplanes. On September 1, 1977, and March 1, 1978, respectively the FAA issued 14 CFR 25.1353(c)(5) and (c)(6), governing nickel-cadmium battery installations on large transport category airplanes.

The proposed use of lithium ion batteries for the IFE system on the Boeing Model 777–300ER airplane has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that existing

regulations do not adequately address several failure, operational, and maintenance characteristics of lithium ion batteries that could affect the safety and reliability of the 777–300ER's lithium ion battery installation.

At present, there is limited experience with use of rechargeable lithium ion batteries in applications involving commercial aviation. However, other uses of this technology, ranging from wireless telephone manufacturing to the electric vehicle industry, have noted safety problems with lithium ion batteries. These problem include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium ion batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway from overcharging increases with increasing battery capacity, because of the higher amount of electrolytes in large batteries.

2. Over-Discharging

Discharge of some types of lithium ion batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status. This is a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium ion batteries use liquid electrolytes that are flammable. The electrolytes can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium ion batteries raise concern about their use in commercial aviation. The intent of these special conditions is to establish appropriate airworthiness standards for lithium ion battery installations in the Boeing Model 777–300ER airplane and to ensure, as required by 14 CFR 25.601, that these battery installations are not hazardous or unreliable. To address these concerns, these special conditions adopt the following requirements:

- Those sections of 14 CFR 25.1353 that are applicable to lithium ion batteries.
- The flammable fluid fire protection requirements of 14 CFR 25.863. In the past, this rule was not applied to batteries of transport category airplanes, since the electrolytes used in lead-acid and nickel-cadmium batteries are not flammable.
- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium ion batteries.
- New maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–300ER airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 777–300ER is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777–300ER airplane.

In lieu of the requirements of 14 CFR 25.1353(c)(1) through (c)(4), the following special conditions apply. Lithium ion batteries on the Boeing Model 777–300ER airplane must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium ion battery in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium ion battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with 14 CFR 25.1309(b) and applicable regulatory guidance.

(6) Each lithium ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state of charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness required by 14 CFR 25.1529 must contain maintenance requirements for measurements of battery capacity at appropriate intervals to ensure that batteries whose function is required for safe operation of the airplane will perform their intended function as long as the battery is installed in the airplane. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of lithium ion batteries in spares storage to prevent the replacement of batteries whose funciton is required for safe operation of the airplane with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge.

Note: These special conditions are not intended to replace 14 CFR 25.1353(c) in the certification basis of the Boeing Model 777–300ER airplane. These special conditions apply only to lithium ion batteries and their installations. The requirements of 14 CFR 25.1353(c) remain in effect for batteries and battery installations of the Boeing Model 777–300ER airplane that do not use lithium ion batteries.

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–2939 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]

RIN 2120–AA66

Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes VOR Federal Airway, V–65 over the East Central United States in support of the Midwest Airspace Enhancement Plan (MASE). The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace assigned to the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers (ARTCC).

DATES: *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: Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 16, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) (71 FR 34854). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received objecting to the proposal.

On January 18, 2007, the FAA published in the **Federal Register** a final rule (72 FR 2182) taking action on all of the above proposed airway establishments, modifications and revocations except V–65 and V–133. Establishment of V–65 was deferred because the Sandusky VOR was out of service. This action establishes V–65 now that the Sandusky VOR has been returned to service. Modification of V–133 was deferred because the original routing proposed in the NPRM did not pass flight check. Action on V–133 will be taken under a separate rulemaking action.

VOR Federal Airways are published in paragraph 6010 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 VOR Federal Airways listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to establish VOR Federal Airway V–65 over the East Central United States within the airspace assigned to the Chicago, Cleveland, and Indianapolis ARTCCs. This action enhances safety and facilitates the more flexible and efficient use of the navigable airspace. Further, this action enhances the management of aircraft operations within the Chicago, Cleveland, and Indianapolis ARTCCs' areas of responsibility.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environment Policy Act in accordance with 311a and 311b., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures''. This airspace action is not expected to cause any potentially significant environment impacts, and no extraordinary circumstances exist that warrant preparation of environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6010 VOR Federal Airways.

* * * * *

V–65 [New]

From DRYER, OH; INT Sandusky, OH 288° and Carleton, MI 157° radials; to Carleton.

* * * * *

Issued in Washington, DC on June 6, 2007.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. E7–11534 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2007. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2007, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during July 2007, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2007.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.33 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent an increase (from those in effect for June 2007) of 0.19 percent for the first 20 years following the valuation date and 0.19 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase of 0.25 percent in the immediate rate from those in effect for June 2007. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2007, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 165, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
165	7–1–07	8–1–07	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 165, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
165	7–1–07	8–1–07	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July 2007, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
July 2007	.0533	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of June 2007.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E7–11561 Filed 6–14–07; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–055–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Maryland regulatory program (the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Maryland Annotated Code (MAC) to increase the end of month balance cap of the Bond Supplement Reserve (Reserve) within the Bituminous Coal Open-Pit Mining Reclamation Fund. The amendment is intended to improve the ability of the Maryland Department of the Environment to finance reclamation projects by increasing the amounts available in the Reserve.

DATES: *Effective Date:* June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (717) 782–4849 ext. 11. E-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. OSM's findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's

program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By an undated letter received on January 29, 2007 (Administrative Record Number MD–587–00), Maryland sent us an amendment to revise its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises MAC provisions to increase the end of month balance cap of the Bond Supplement Reserve within the Bituminous Coal Open-Pit Mining Reclamation Fund. Maryland submitted these proposed amendments on its own initiative to improve the ability of the Maryland Department of the Environment to finance reclamation projects by increasing the amounts available in the Reserve.

In its submittal of this amendment, Maryland stated that this action will improve the ability of the Maryland Department of the Environment to finance reclamation projects by increasing the amounts available in the Reserve. Maryland stated that the amendment also addresses findings and recommendations found in the Actuarial Study approved by OSM in the **Federal Register** dated May 13, 1998 (63 FR 26451).

The Reserve was established for reclamation purposes when the original bond is not sufficient to reclaim the site for which it was posted in the event of forfeiture. The Reserve receives revenues from two separate surcharges that are assessed for each ton of coal removed by the open-pit or strip method. These funds are used to supplement forfeited bonds to enable the mine site to be reclaimed. If the funds in the Reserve at the end of any month equal or exceed a certain fixed level, or cap, deposits into the Reserve from these surcharges are temporarily stopped. If the funds in the Reserve at the end of any month then drop below a certain fixed level, or floor, deposits into the Reserve from these surcharges are resumed. In this amendment, Maryland proposes to raise both the cap and the floor levels, in order to ensure that more funds are always available for reclamation expenses.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal Regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

1. MAC 15–517(c)

Prior to this amendment, subsection (c) provided as follows:

> (c) When the amount of money in the bond supplement reserve equals or exceeds $300,000 at the end of the month, deposits into the reserve of the amounts provided in subsection (b)(1) and (2) of this section shall end temporarily.

Maryland proposed to revise Subsection (c) by increasing the end-of-month balance cap of the Bond Supplement Reserve from $300,000 to $750,000.

As amended, Subsection (c) provides as follows:

> (c) When the amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month, deposits into the reserve of the amounts provided in subsection (b)(1) and (2) of this section shall end temporarily.

Because the amendment to this provision ensures more revenues are available in the Bond Supplement Reserve, we find that the changes are not inconsistent with the Federal Regulations at 30 CFR 800.11(e), pertaining to the establishment and maintenance of an alternative bonding system, and can be approved.

2. MAC 15–517(d)(1)

Prior to this amendment, subsection (d)(1) provided as follows:

> (1) The amount of money in the bond supplement reserve equals or exceeds $300,000 at the end of the month;

Maryland proposed to raise the end-of-month balance cap of the Bond Supplement Reserve from $300,000 to $750,000.

As amended, Subsection (d)(1) provides as follows:

> (1) The amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month;

Because the amendment to this provision ensures more revenues are available in the Bond Supplement Reserve, we find that the changes are not inconsistent with the Federal Regulations at 30 CFR 800.11(e) and can be approved.

3. MAC 15–517(e)

Prior to this amendment, subsection (e) provided as follows:

> (e) At the end of any month when the amount of money in the bond supplement reserve is reduced below $200,000:

Maryland proposed to raise the amount from $200,000 to $500,000 because it believes that the end-of-month balance cap that triggers the resumption of surcharges and deposits needed to be increased as well.

As amended, Subsection (e) provides as follows:

> (e) At the end of any month when the amount of money in the bond supplement reserve is reduced below $500,000:

Because the amendment to this provision ensures more revenues are available in the Bond Supplement Reserve, we find that the changes are not inconsistent with the Federal Regulations at 30 CFR 800.11(e) and can be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number MD–587–02), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Maryland program (Administrative Record Number MD–587–01), but did not receive any.

V. OSM's Decision

Based on the above findings, we approve the Maryland amendment that we received on January 29, 2007.

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately.

Section 503(a) of SMCRA requires that Maryland's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Maryland and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In accordance with Executive Order 12630, the provisions in the rule, as described in the preamble, do not have significant takings implications; therefore, a takings implication assessment is not required.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by

section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 4, 2007.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

PART 920—MARYLAND

■ 1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
January 29, 2007	June 15, 2007	MAC 15–517(c); 15–517(d)(1); and 15–517(e).

[FR Doc. E7–11610 Filed 6–14–07; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–058]

Drawbridge Operation Regulations; Charles River and Its Tributaries, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Massachusetts Bay Commuter Railroad (MBCR)/Amtrak Bridge across the Charles River, mile 0.8, at Boston, Massachusetts. Under this temporary deviation, in effect for two weekends, the MBTA/Amtrak Bridge may remain in the closed position on Friday evening June 8 and 15, 2007, from 11:59 p.m. through to 5 a.m. Saturday morning. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate bridge track repairs.

DATES: This deviation is effective from June 8, 2007 through June 16, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The MBTA/Amtrak Bridge, across the Charles River, mile 0.8, at Boston, Massachusetts, has a vertical clearance in the closed position of 3 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.591(c).

The owner of the bridge, the Massachusetts Bay Commuter Railroad (MBCR), requested a temporary deviation to facilitate repairs to the bridge rails.

Under this temporary deviation the MBCR/Amtrak Bridge need not open for the passage of vessel traffic on Friday evening June 8, 2007 and June 15, 2007, from 11:59 p.m. through 5 a.m. Saturday morning. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 4, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–11550 Filed 6–14–07; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–021]

RIN 1625–AA00

Safety Zone; Roostertail Fireworks, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This zone is intended to restrict vessels from a portion of Detroit River during the Roostertail fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. on June 2, 2007 until 11 p.m. on June 29, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–07–021] and are available for inspection or copying at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Roostertail Fireworks Display. The fireworks display will occur between 9 p.m. and 11 p.m. on June 2, 2007 and June 29, 2007.

The safety zone for the June 2, 2007 and June 29, 2007 fireworks will encompass all waters of Detroit River, near the Roostertail Restaurant between Detroit and Belle Isle, bound by the following coordinates: 42–21′17.75″ N/082–58′31.12″ W; 42–21′13.15″ N/082–58′28.40″ W; 42–21′16.36″ N/082–58′19.42″ W; 42–21′20.59″ N/082–58′22.36″ W. All geographic coordinates

are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Detroit River between Detroit and Belle Isle near the Roostertail Restaurant between 9 p.m. and 11 p.m. on June 2, 2007 and June 29, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 2 hours. Vessel traffic can pass safely around the safety zone. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: Ports and Waterways Safety Act, 33 U.S.C. 1221–1232, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–021 to read as follows:

§ 165.T09–021 Safety zone; Roostertail Fireworks, Detroit River, Detroit, MI.

(a) *Location:* The following area is a temporary safety zone: All waters of Detroit River, between Detroit and Belle Isle near the Roostertail Restaurant, bound by the following coordinates: 42–21′17.75″ N/082–58″31.12″ W; 42–21′13.15″ N/082–58′28.40″ W; 42–21′16.36″ N/082–58′19.42″ W; 42–21′20.59″ N/082–58′22.36″ W. (NAD 83).

(b) *Effective period.* This regulation is effective from 9 p.m. on June 2, 2007 until 11 p.m. on June 29, 2007.

(c) *Enforcement period.* This regulation will be enforced from 9 p.m. to 11 p.m. on June 2, 2007 and from 9 p.m. to 11 p.m. on June 29, 2007.

(d) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''designated on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated on-scene representative.

Dated: May 19, 2007.

P.W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E7–11538 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–030]

RIN 1625–AA00

Safety Zone; Celebrate America Fundraiser Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near the Grosse Point Club, Lake St. Clair, Grosse Pointe Farms, Michigan. This zone is intended to restrict vessels from a portion of Lake St. Clair during the Celebrate America Fundraiser fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9:30 p.m., June 14, 2007 until 11 p.m., June 14, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are parts of docket [CGD09–07–030] and are available for inspection or copying at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative

comments previously with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Celebrate America Fundraiser Fireworks Display. The fireworks display will occur between 9:30 p.m. and 11 p.m. on June 14, 2007.

The safety zone will encompass all waters of Lake St. Clair within a five hundred foot radius of the fireworks barge which will be located at 42–22′58″ N; 082–53′46″ W. The fireworks barge will be located approximately 1,500 feet directly offshore from the Grosse Point Club. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake St. Clair near the Grosse Point Club, located on the west side of Lake St. Clair in Grosse Pointe Farms, MI, between 9:30 p.m. and 11 p.m. on June 14, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 1.5 hours. Vessel traffic can pass safely around the safety zone. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–030 is added to read as follows:

§ 165.T09–030 Safety zone; Celebrate America Fundraiser Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location:* The following area is a temporary safety zone: All waters of Lake St. Clair southeast from the Grosse Point Club within a five hundred foot radius of the fireworks barge located at 42–22′58″ N, 082–53′46″ W. NAD 83).

(b) *Effective Time and Date.* This regulation is effective from 9:30 p.m. until 11 p.m. on June 14, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''designated on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated on-scene representative.

Dated: May 24, 2007.

P.W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E7–11553 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–012]

RIN 1625–AA87

Security Zones; Major League Baseball All-Star Game, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary security zones on the navigable waters of the San Francisco Bay in the vicinity of San Francisco Pier 30/32 and McCovey Cove located in San Francisco, California. These regulated areas are necessary to provide security for participants, spectators, and the general public during this high profile event. The security zones will prohibit all persons and vessels from entering, transiting through, or anchoring within portions of the San Francisco Bay surrounding Pier 30/32 and McCovey Cove, unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from 8 a.m. on July 7, 2007 through 11:59 p.m. on July 10, 2007.

ADDRESSES: Documents indicated in this preamble as being available for docket are part of docket COTP San Francisco 07–012 and are available for inspection or copying at the Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric Ramos, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 extension 143 or Sector San Francisco 24-hour Command Center at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the planning for this event was not finalized and presented in time to draft and publish an NPRM.

For the same reason listed in the previous paragraph, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Background and Purpose

Major League Baseball (MLB) and the San Francisco Giants are sponsoring a series of events leading up to and concluding with the 2007 MLB All-Star Game at AT&T Park in San Francisco from July 7, 2007 to July 10, 2007. This rule is necessary to provide for the security of participants, spectators, and the general public at this high profile event.

Discussion of Rule

The first regulated area in the vicinity of Pier 30/32 will include all navigable waters, from the surface to the seafloor, encompassed by connecting the following points to form a fifty-yard security zone around the pier: beginning at latitude 37°47.26′ N and longitude 122°23.23′ W; thence east to latitude 37°47.26′ N and longitude 122°23.01′ W; thence south to latitude 37°47.13′ N and longitude 122°23.01′ W; and lastly west to latitude 37°47.11′ N and longitude 122°23.24′ W.

The second regulated area in the vicinity of McCovey Cove (China Basin from 3rd Street Bridge to the Bay) will include all navigable waters, from the surface to the seafloor, encompassed by connecting the following points to form a security zone: Beginning at latitude 37°46.70′ N and longitude 122°23.12′ W; thence south-southeasterly to latitude 37°46.58′ N and longitude 122°23.10′ W; thence north-northwesterly to latitude 37°46.61′ N and longitude 122°23.39′ W; thence north-northwesterly to latitude 37°46.63′ N and longitude 122°23.41′ W; and then back to the beginning point (NAD 83). Booms will be placed in the water to mark the entry and exit points of this zone. The only vessels that will be permitted to enter are human-powered vessels 20 feet or less in length and other vessels specified by Major League Baseball or the City of San Francisco. All persons and vessels must consent to search before being permitted to enter this zone.

No person or vessel may enter or remain within the security zones unless authorized by the Captain of the Port, San Francisco, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing these security zones.

Regulatory Evaluation

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

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because: (i) The zones encompass only small portions of the waterway; (ii) vessels may be allowed to enter the zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate security on the navigable waters adjacent to AT&T Park and other event venues. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

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

We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish recreationally, sightsee, transit, or anchor in the waters affected by this security zone. This security zone will not have a significant economic impact on a substantial number of small entities for several reasons. This rule will only be in effect for less than four days during the duration of the events and the zones do not encompass areas that are highly trafficked. Vessel traffic can pass safely around the zone at Pier 30/32, and certain vessels will be allowed to enter and remain in the zone at McCovey Cove. Furthermore, other traffic may be allowed to pass through the zones with the permission of the Coast Guard patrol commander. Before the effective period, small entities and the maritime public will be advised of this security zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Eric Ramos, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (415) 556–2950 extension 143, or the 24 hour Command Center at (415) 399–3547.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are creating security zones.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–187 to read as follows:

§ 165.T11–187 Security Zones; Major League Baseball All-Star Game, San Francisco Bay, CA

(a) *Location.* The first regulated area in the vicinity of Pier 30/32 will include all navigable waters, from the surface to the seafloor, encompassed by connecting the following points to form a fifty-yard security zone around the pier: Beginning at latitude 37°47.26′ N and longitude 122°23.23′ W; thence east to latitude 37°47.26′ N and longitude 122°23.01′ W; thence south to latitude 37°47.13′ N and longitude 122°23.01′ W; and lastly west to latitude 37°47.11′ N and longitude 122°23.24′ W. The second regulated area in the vicinity of McCovey Cove (China Basin from 3rd Street Bridge to the Bay) will include all navigable waters, from the surface to the seafloor, encompassed by connecting the following points to form a security zone: beginning at latitude 37°46.70′ N and longitude 122°23.12′ W; thence south-southeasterly to latitude 37°46.58′ N and longitude 122°23.10′ W; thence north-northwesterly to latitude 37°46.61′ N and longitude 122°23.39′ W; thence north-northwesterly to latitude 37°46.63′ N and longitude 122°23.41′ W; and then back to the beginning point (NAD 83).

(b) *Effective period.* This section is effective from 8 a.m. on July 7, 2007 through 11:59 p.m. on July 10, 2007. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the security zones and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within these security zones

by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco or his designated representative. Human-powered vessels 20 feet or less in length, and other vessels specified by Major League Baseball or the City of San Francisco, will be permitted to enter and remain in the security zone at McCovey Cove. All persons and vessels must consent to search before being permitted to enter this zone.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by other local, state and federal law enforcement as necessary.

Dated: June 6, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. E7–11602 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–015]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks, City of Monterey, Monterey Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, during the City of Monterey's Fourth of July Fireworks display, to be held on July 4, 2007, in the navigable waters of Monterey Bay. This safety zone is necessary to ensure the safety of participants and spectators during the loading, transport, and launching of fireworks. Unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone without permission of the Captain of the Port or his designated representative.

Enforcement Dates: 33 CFR 165.1191 will be enforced from 9 a.m. to 9:35 p.m. on July 4, 2007.

FOR FURTHER INFORMATION CONTACT: Ensign Sheral Richardson, Waterways Management Branch, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 extension 136.

SUPPLEMENTARY INFORMATION: The City of Monterey, Recreation and Community Services Department is sponsoring the annual Fourth of July Fireworks display in the navigable waters of Monterey Bay near the beach east of Municipal Wharf #2. The safety zone established in 33 CFR 165.1191 will be enforced surrounding the barge used as a fireworks launch platform. During the loading of the barge, transit of the barge to the display location, and fifteen minutes prior to the start of the fireworks display, the safety zone will encompass the waters around and under the barge within a radius of 100 feet. Fifteen minutes preceding and during the twenty minute fireworks display itself, the safety zone increases in size to encompass the waters around and under the barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the barge is scheduled to commence at 9 a.m. on July 4, 2007, and will take place at the U.S. Coast Guard Pier, 100 Lighthouse Avenue, Monterey, California. Towing of the barge to the display location is scheduled to take place between 2 p.m. and 9 p.m. on July 4, 2007. During the fireworks display, scheduled to start at approximately 9:15 p.m. on July 4, 2007, the barge will be located approximately 1,500 feet from Municipal Wharf #2 in position 36° 36.178′ N, 121° 53.172′ W.

In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

The Coast Guard has granted the event sponsor a marine event permit for the fireworks display. This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice, the maritime community will be provided advance notification of the enforcement via Broadcast Notice to Mariners. If the Captain of the Port determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 30, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. E7–11603 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 501

Revisions to the Requirements for Authority to Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service™ amends its regulations on authorization to manufacture and distribute postage evidencing systems. The amendment corrects language that conflicts with the way we do business with PC Postage vendors.

DATES: This rule is effective July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey at 202–268–7613 or Postage Technology Management, Postal Service, at 703–292–3691.

SUPPLEMENTARY INFORMATION: The Postal Service published a final rule in the **Federal Register** on November 9, 2006 to revise 39 CFR 501, Authorization to Manufacture and Distribute Postage Meters.

As a result, language was used in paragraph 501.16(d) that is in conflict with the way we do business with PC Postage® vendors. This revision will correct that language.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

■ For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Section 501.16 is revised to read as follows:

§ 501.16 PC postage payment methodology.

(a) The PC Postage customer is permitted to make payments for postage

in one of two ways: Automated clearinghouse (ACH) transfer or credit card.

(b) The provider must make payments on behalf of the customer to the Postal Service in accordance with contractual and/or regulatory responsibilities.

(c) The Postal Service requires that the provider publicize to all PC Postage customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Credit cards.

(d) Returned ACH debits are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the account until the Postal Service receives payment in full.

(e) *Refunds.* The provider issues a refund to a customer for any unused postage in a Postage Evidencing System. After verification by the Postal Service, the provider will be reimbursed by the Postal Service for the individual refunds provided to customers by the provider.

(f) *Security and revenue protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by PTM. All such audits will be an expense of the provider.

(g) *Inspection of records and facilities.* The provider must make its facilities, which handle the operation of the PC Postage system and all records about the operation of the system, available for inspection by representatives of the Postal Service at all reasonable times.

(h) To the extent that the customer maintains funds on deposit for the payment of postage, the provider is required to incorporate the following language into its agreements with PC Postage customers:

Acknowledgment of Deposit Requirement—PC Postage

By signing this agreement with the provider, you represent that you have read the Acknowledgment of Deposit Requirement—PC Postage and are familiar with its terms. You agree that, upon execution of this agreement with the provider, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

Neva Watson,

Attorney, Legislative.

[FR Doc. 07–2955 Filed 6–14–07; 8:45 am]

BILLING CODE 7710–12–M

POSTAL REGULATORY COMMISSION

39 CFR Parts 3000, 3001, 3002, 3003 and 3004

[Docket No. RM2007–2; Order No. 5]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: This document identifies limited amendments to the Code of Federal Regulations (CFR) related to passage of a postal reform law. The amendments affect nomenclature, section numbering, and citation to statutory authority. These changes will facilitate operation and practice under the new law. Additional conforming changes are under consideration. Given the technical and administrative nature of the changes, comments are not required or requested.

DATES: Effective June 15, 2007. Newly redesignated § 3002.3 is suspended indefinitely.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: The Postal Accountability and Enhancement Act (PAEA), Public Law 109–435 (December 20, 2006), recast the Postal Rate Commission as the Postal Regulatory Commission and modified its responsibilities and authorities. To recognize these changes, existing provisions in the Code of Federal Regulations (CFR) must be amended. This rulemaking is part of that process.

Chapter III of title 39 of the CFR is amended to read Postal Regulatory Commission. The authority identified in Parts 3000, 3001, 3002, and 3004 as 39 U.S.C. 3603 is amended to read 39 U.S.C. 503. The name Postal Regulatory Commission is substituted for Postal Rate Commission in sections 3000.735–101, 3001.3, 3001.5(c), 3001.9(a), 3001.17(b)(1), 3001.17(b)(2), 3001.31(k)(3)(i)(*i*), 3001.110, 3001.114, 3001.116, 3002 section contents, 3002.1, 3002.3(a), 3003.2(a) and 3003.7.

In Part 3002—Organization, the statutory functions of the agency and its individual offices are being revised, and amended regulations will be issued in the future. To accommodate revised regulations, sections 3002.3 through 3002.7 are renumbered as 3002.10 through 3002.14, and section 3002.8, Official Seal, is renumbered as 3002.3. The provisions of renumbered section 3002.3, Official Seal, are suspended.

New section 3002.15 is added to allow for an appropriate description of the functions of the newly established Office of Public Affairs and Governmental Relations. New section 3002.16 is added to allow for an appropriate description of the functions of the newly established Office of Inspector General.

Revisions to part 3001—Rules of Practice and Procedure are also under preparation.

The following table summarizes the impact of this order on provisions in 39 CFR, part 3002.

Part 3002—Organization

3002.1 Retain without change
3002.2 Retain without change
3002.3 Redesignate as 3002.10
3002.8 Redesignate as 3002.3 and Suspend
3002.4 through 8 Retain and Reserve
3002.9 Add new section and Reserve
3002.3 Redesignate as 3002.10
3002.4 Redesignate as 3002.11
3002.5 Redesignate as 3002.12
3002.6 Redesignate as 3002.13
3002.7 Redesignate as 3002.14

Add two new sections

3002.15 Office of Public Affairs and Governmental Relations
3002.16 Office of Inspector General

Ordering Paragraphs

It is ordered:

1. The Commission adopts the revisions referred to in the body of this order.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued March 9, 2007.
Signed June 8, 2007.
By the Commission.

Steven W. Williams,

Secretary.

List of Subjects

39 CFR Part 3000

Conflict of interest.

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3002

Organization and functions (Government agencies), Seals and insignia.

39 CFR Part 3003

Privacy.

39 CFR Part 3004

Administrative practice and procedure, Confidential business information, Freedom of information.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends parts 3000, 3002, 3003, 3004 of chapter III of 39 CFR as follows:

CHAPTER III—POSTAL REGULATORY COMMISSION

■ 1. The heading for Chapter III of title 39 is revised to read as set forth above.

PART 3000—STANDARDS OF CONDUCT

■ 2. The authority citation for part 3000 is revised to read as follows:

Authority: 39 U.S.C. 3603; E.O. 12674; 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396, 5 CFR parts 2634 and 2635.

§ 3000.735–101 [Amended]

■ 3. In § 3000.735–101, remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission.''

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 3001(a) is revised to read as follows:

Authority: 39 U.S.C. 404(b); 503; 3622–24, 3661, 3662, 3663.

§§ 3001.3, 3001.5, 3001.9, 3001.17, 3001.31, 3001.110, 3001.114, 3001.116 [Amended]

■ 5. Remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission'' in the following places:

a. 3001.3
b. 3001.5(c)
c. 3001.9(a)
d. 3001.17(b)(1)
e. 3001.17(b)(2)
f. 3001.31(k)(3)(i)(*i*)
g. 3001.110
h. 3001.114
i. 3001.116

PART 3002—ORGANIZATION

■ 6. The authority citation for Part 3002 is revised to read as follows:

Authority: 39 U.S.C. 503; 5 U.S.C. 552.

§ 3002.1 [Amended]

■ 7. Remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission'' in § 3002.1.

§ 3002.3 [Amended]

■ 8. Remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission'' in § 3002.3(a).

§§ 3002.3 through 3002.7 [Redesignated as §§ 3002.10 through 3002.14]

■ 9. Redesignate §§ 3002.3 through 3002.7 as §§ 3002.10 through 3002.14.

§§ 3002.4 through 3002.7 [Removed]

■ 10. Remove and reserve §§ 3002.4 through 3002.7.

§ 3002.8 [Redesignated as § 3002.3 and Suspended]

■ 11. Redesignate § 3002.8 as § 3002.3 and suspend.

§ 3002.9 [Removed]

■ 12. Remove and reserve § 3002.9.

■ 13. Add and reserve § 3002.15.

§ 3002.15 Office of Public Affairs and Governmental Relations [Reserved]

■ 14. Add and reserve § 3002.16.

§ 3002.16 Office of Inspector General [Reserved]

Appendix A to Part 3002 [Amended]

■ 15. Remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission'' in Appendix A to part 3002 (heading and introductory text).

PART 3003—PRIVACY ACT RULES

■ 16. The authority citation for part 3003 continues to read as follows:

Authority: Privacy Act of 1974 (Pub. L. 93–579); 5 U.S.C. 552a.

§§ 3003.2 and 3003.7 [Amended]

■ 17. Remove the words ''Postal Rate Commission'' and add, in their place, the words ''Postal Regulatory Commission'' in

a. 3003.2(a)
b. 3003.7

PART 3004—FREEDOM OF INFORMATION RULES

■ 18. The authority citation for part 3004 is revised to read as follows:

Authority: 39 U.S.C. 503; 5 U.S.C. 552a.

[FR Doc. E7–11471 Filed 6–14–07; 8:45 am]
BILLING CODE 7710–FW–P

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2007–0061]

RIN 0579–AC40

Importation of Blueberries From South Africa, Uruguay, and Argentina With Cold Treatment; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an error in our proposed rule to amend the regulations to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions and to allow the use of cold treatment for blueberries imported into the United States from Argentina. The proposed rule was published in the **Federal Register** on June 5, 2007 (72 FR 30979–30984, Docket No. APHIS 2007–0061).

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On June 5, 2007, we published in the **Federal Register** (72 FR 30979–30984, Docket No. APHIS–2007–0061) a proposed rule to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries would have to undergo cold treatment and would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the exporting country. In addition, we also proposed to allow the use of cold treatment for blueberries imported into the United States from Argentina.

In two places in the Supplementary Information section of the proposed rule and in one place in the regulatory text, we stated that we would require shipments of blueberries from South Africa and Uruguay to be accompanied by a phytosanitary certificate issued by the NPPO of the importing country. This information was incorrect. We should have stated that we would require shipments of blueberries from South Africa and Uruguay to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country. This document corrects those errors.

Correction

In FR Doc. E7–10818, published on June 5, 2007 (72 FR 30979–30984) make the following corrections: On page 30980, first column, fourteenth line following the second table; on page 30981, first column, tenth line; and on page 30984, first column, in proposed § 319.56–2vv(b), correct ''importing'' to read ''exporting''.

Done in Washington, DC, this 11th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–11616 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27864; Directorate Identifier 2007–CE–038–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL 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:

> To prevent damage to the rear spar due to working and failing rivets between the rear spar and the inboard rib * * *

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 July 16, 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, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *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) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

ADDRESSES section. Include ''Docket No. FAA–2007–27864; Directorate Identifier 2007–CE–038–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 Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/750XL/9, dated March 29, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> To prevent damage to the rear spar due to working and failing rivets between the rear spar and the inboard rib * * *

The MCAI requires inspecting the inboard end of the rear spar for security of the blind rivets, inspecting the radii of the rear spar upper and lower flanges for cracking, inspecting the aft flange of the inboard rib for cracking, replacing the rear spar if cracks are found in any of the inspections, and modifying the rear spar by replacing the blind rivets with bolts or rivets.

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

Relevant Service Information

Pacific Aerospace Limited has issued Mandatory Service Bulletin PACSB/XL/022, dated February 14, 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 7 products of U.S. registry. We also estimate that it would take about 40 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $200 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 proposed AD on U.S. operators to be $23,800, or $3,400 per product.

In addition, we estimate that any necessary follow-on actions would take about 40 work-hours and require parts costing $750, for a cost of $3,950 per product. This cost estimate is per side. 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:

Pacific Aerospace Limited: Docket No. FAA–2007–27864; Directorate Identifier 2007–CE–038–AD.

Comments Due Date

(a) We must receive comments by July 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 750XL airplanes, serial numbers 101, 102, and 104 through 128, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

To prevent damage to the rear spar due to working and failing rivets between the rear spar and the inboard rib * * *

The MCAI requires inspecting the inboard end of the rear spar for security of the blind rivets, inspecting the radii of the rear spar upper and lower flanges for cracking, inspecting the aft flange of the inboard rib for cracking, replacing the rear spar if cracks are found in any of the inspections, and modifying the rear spar by replacing the blind rivets with bolts or rivets.

Actions and Compliance

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

(1) Within 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 150 hours TIS until the blind rivets have been replaced by bolts or rivets as required in paragraph (f)(3) of this AD, inspect the inboard end of the rear spar for security of the blind rivets, which attach the fuselage attach fitting to the rear spar and inboard rib; inspect the radii of the rear spar upper and lower flanges for cracking; and inspect the aft flange of the inboard rib for cracking following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/022 dated February 14, 2007.

(2) Before further flight, after any inspection where cracking is found, repair the aft flange of the inboard rib and/or replace the rear spar following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/022 dated February 14, 2007.

(3) Within 12 months or 300 hours TIS after the effective date of this AD, whichever occurs first, replace the blind rivets (part number NAS1738E–6–6) that join the rear spar and the aft end of the inboard rib with bolts or rivets following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/022, dated February 14, 2007.

(4) At intervals not to exceed 12 months or 300 hours TIS after the effective date of this AD, whichever occurs first, after the modification required in paragraph (f)(3) of this AD, repetitively inspect the main wing aft attachment area following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/022, dated February 14, 2007. If any cracks are found, prior to further flight, repair the main wing aft attachment area.

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, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found 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.

(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 the Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand AD DCA/750XL/9, dated March 29, 2007; and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/022, dated February 14, 2007, for related information.

Issued in Kansas City, Missouri, on June 8, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11589 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]

RIN 2120–AA66

Proposed Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM would change the description for the proposed modification of VOR Federal Airway V–133, previously published in the **Federal Register** on June 16, 2006 (71 FR 34854). This action would improve the efficient use of the navigable airspace assigned to the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers (ARTCC).

DATES: Comments must be received on or before July 30, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2006–24926 and Airspace Docket No. 06–ASW–1, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–24926 and Airspace Docket No. 06–ASW–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–24926 and Airspace Docket No. 06–ASW–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the

closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On June 16, 2006, the FAA published an NPRM in the **Federal Register** to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) (71 FR 34854). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received objecting to the proposal.

On January 18, 2007, the FAA published in the **Federal Register** a final rule (72 FR 2182) taking action on all of the above proposed airway establishments, modifications and revocations except V–65 and V–133. Action on V–65 was deferred because the Sandusky VOR was out of service. Establishment of V–65 is being taken under separate rulemaking. Action on V–133 was deferred because the original routing proposed in the NPRM did not pass flight check. This SNPRM proposes an alternative routing for V–133 that has already passed flight check.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to modify V–133 over the East Central United States. This action is proposed as part of MASE to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace. Further, this action would enhance the management of aircraft operations within the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers' areas of responsibility.

VOR Federal Airways are published in paragraph 6010 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 VOR Federal Airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed 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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environment Policy Act in accordance with 311a and 311b., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures''. This airspace action is not expected to cause any potentially significant environment impacts, and no extraordinary circumstances exist that warrant preparation of environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6010 VOR Federal Airways

* * * * *

V–133 [Revised]

From INT Charlotte, NC, 305° and Barretts Mountain, NC, 197° radials; Barrets Mountain; Charleston, WV; Zanesville, OH; Tiverton, OH; Mansfield, OH; Sandusky, OH; INT Sandusky 342°(T)/346°(M) and Detroit, MI 138°(T)/144°(M) radials; Detroit; Salem, MI; INT Salem 346° and Saginaw, MI 160° radials; Saginaw; Traverse City, MI; Escanaba, MI; Sawyer, MI; Houghton, MI; Thunder Bay, ON, Canada; International Falls, MN; to Red Lake, ON, Canada. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on June 6, 2007.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. E7–11537 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–147171–05]

RIN 1545–BF34

Deductions for Entertainment Use of Business Aircraft

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the use of business aircraft for entertainment. These proposed regulations affect taxpayers that deduct expenses for entertainment, amusement, or recreation provided to specified individuals. This document also provides notice of a public hearing on these proposed regulations. The proposed regulations reflect amendments under the American

Jobs Creation Act of 2004 (AJCA) and the Gulf Opportunity Zone Act of 2005 (GOZA).

DATES: Written comments must be received by September 13, 2007. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for October 25, 2007, at 10 a.m., must be received by October 4, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147171–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147171–05), courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the internet at the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–147171–05). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 274, Michael A. Nixon of the Office of Associate Chief Counsel (Income Tax & Accounting), (202) 622–4930; concerning the regulations under section 61, Lynne A. Camillo of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities), (202) 622–6040 (not toll-free numbers); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 274(e)(2) of the Internal Revenue Code (Code). Section 274(e)(2) was amended by section 907 of the AJCA, Public Law 108–357, and by section 403(mm) of the GOZA, Public Law 109–135. Both amendments are effective for certain expenses incurred after October 22, 2004. On May 27, 2005, the IRS and Treasury Department issued Notice 2005–45 (2005–24 IRB 1228) providing interim guidance on amended section 274(e)(2) and inviting comments. Notice 2005–45 is effective for expenses incurred after June 30, 2005. Commentators submitted written and electronic comments responding to Notice 2005–45. The IRS and Treasury Department have reviewed and considered all the comments in the process of preparing these proposed regulations. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Generally, section 162(a) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under section 274(a)(1)(A), no deduction is allowed for an activity generally considered to be entertainment, amusement, or recreation, unless the taxpayer establishes that the activity is directly related to or (in certain cases) associated with the active conduct of the taxpayer's trade or business.

Section 1.274–2(b)(1) of the Income Tax Regulations provides that entertainment means any activity of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips. Similar activities relating solely to the taxpayer's family also may constitute entertainment. Entertainment may include an activity that satisfies the personal, living, or family needs of an individual, such as providing food and beverages or a hotel suite to a business customer or the customer's family. Entertainment does not include activities, however, that are clearly not regarded as constituting entertainment, such as the provision of supper money by an employer to an employee working overtime, the maintenance of a hotel room by an employer for lodging of an employee while in business travel status, or the use of an automobile in the active conduct of a trade or business even though also used for routine personal purposes such as commuting to and from work. Under § 1.274–2(b)(1)(ii), an objective test is used to determine whether an activity is of a type generally considered to constitute entertainment.

Section 274(e) provides exceptions to the general disallowance provisions of section 274(a). Prior to amendment by the AJCA, section 274(e)(2) excepted expenses from section 274(a) ''to the extent that the expenses are treated by the taxpayer'' as compensation to the employee. Under prior law, section 274(e)(9) similarly excepted expenses to the extent that the expenses are treated by the taxpayer as income to persons who are not employees.

Section 274(o) provides that the Secretary shall prescribe regulations necessary to carry out the purposes of the section.

Generally, § 1.61–21(b)(1) requires an employee to include in gross income the fair market value of a fringe benefit, such as an entertainment flight, after subtracting amounts paid, by or on behalf of the employee, for the fringe benefit, as well as amounts excluded from income by another section of the Code. If an employee takes a personal flight on an employer's aircraft, and the employer also provides a pilot, the general rule under § 1.61–21(b)(6) is that the fair market value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. If the employer does not provide a pilot, the general rule under § 1.61–21(b)(7) is that the fair market value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for that period in the geographic area in which the aircraft is used. The regulations do not permit valuation of a flight by reference to the employer's costs.

As an alternative to the general valuation rules just described, § 1.61–21(g) provides that an employee's personal flights on an employer's aircraft may be valued using an optional special valuation rule, the non-commercial flight valuation rule. In order to use the non-commercial flight valuation rule, applying the applicable aircraft multiple from § 1.61–21(g)(7), it is necessary to know the weight of the employer's aircraft, the number of miles for the flight being valued, and whether the employee receiving the benefit is a control employee within the meaning of § 1.61–21(g)(8) or (9). The value of an employee's personal use of a company aircraft is computed by multiplying the Standard Industry Fare Level (SIFL) by the terminal charge to arrive at the value of the flight (the SIFL formula). SIFL is a cents-per-mile factor that, taken with the aircraft multiple and the terminal charge, is intended to approximate coach and first class fares on commercial aircraft.

The consistency rule set forth in § 1.61–21(g)(14)(i) provides that a taxpayer who uses the SIFL formula in a calendar year to value any flight provided to an employee must use the SIFL formula to value all flights provided to employees during that calendar year. Notice 2005–45 advised taxpayers that the consistency rule in the regulations would be amended to permit taxpayers to value the entertainment use of aircraft by specified individuals (within the meaning of section 274(e)(2)(B)) under

the fair market value rules of § 1.61–21(b) but continue to value flights for other employees and for specified individuals not traveling for entertainment purposes using the SIFL formula.

In *Sutherland Lumber-Southwest, Inc.* v. *Comm'r*, 114 T.C. 197 (2000), *aff'd* 255 F.3d 495 (8th Cir. 2001), *acq.* 2002–1 CB xvii, the Tax Court held that the amount a taxpayer may deduct for the cost of entertainment-related flights under the section 274(e)(2) exception is not limited to the amount included in the income of the employees and corporate officers who took the flights. Rather, the court held that a taxpayer may deduct the full cost of an employee's or officer's non-business flight on the taxpayer's aircraft if the taxpayer includes in the recipient's income the value of the flights computed under the non-commercial flight valuation rule of § 1.61–21. As a result, a deduction greater than the amount included in the recipient's income was allowable.

Section 907 of the AJCA was intended to overturn *Sutherland Lumber* in certain cases. H. Conf. Rept. No. 108–755, at 798 (2004). Specifically, as amended by the AJCA, the section 274(e)(2) and (9) exceptions to the section 274(a) disallowance apply in the case of a specified individual only ''to the extent that the expenses do not exceed the amount of expenses'' that are treated as compensation to the specified individual. A specified individual is any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) with respect to the taxpayer, or who would be subject to those requirements if the taxpayer were an issuer of equity securities referred to in that section. Section 274(e)(2)(B).

Thus, in the case of a specified individual, the section 274(e)(2) and (9) disallowance exceptions apply only to the extent that a taxpayer treats as compensation to the specified individual an amount equal to or greater than the amount of deductible entertainment expenses allocable to entertainment provided to the specified individual. Expenses allocable to entertainment provided to the specified individual that the taxpayer does not treat as compensation to the specified individual are disallowed.

Explanation of Provisions and Summary of Comments

1. Definition of Entertainment

a. Distinction Between Entertainment and Other Personal Use

Notice 2005–45 references § 1.274–2(b)(1) in defining entertainment. Commentators suggested that the proposed regulations should provide additional guidance on the meaning of ''entertainment'' in order to assist taxpayers in delineating between entertainment use and ''nonentertainment'' personal use. The proposed regulations do not adopt these comments because these rules are addressed in the existing regulations at § 1.274–2(b)(1). Consistent with those regulations, entertainment does not include travel for reasons such as attending to business other than that of the employer, medical purposes, attending funerals, and participating in charitable activities.

b. Primary Purpose Test

Several commentators recommended that the proposed regulations adopt a purpose of the flight test that would characterize a flight as a business flight for all purposes if the primary purpose of the flight is business. Thus, under the recommendation, if the primary purpose of the flight were business, no amount would be disallowed for entertainment provided to specified individuals who are traveling for entertainment purposes. Conversely, if the primary purpose of the flight were entertainment, no amount would be allowed as an expense deduction with respect to individuals traveling for business. The proposed regulations do not adopt these comments. The IRS and Treasury Department believe that disregarding entertainment use by a specified individual would be contrary to Congressional intent in amending section 274(e)(2) to disallow expenses allocable to entertainment use of aircraft by specified individuals. Section 274(e)(2)(B) focuses on the recipient of the entertainment, amusement, or recreation, not the purpose of the employer providing the entertainment or the overall use of the aircraft.

c. Use of Aircraft for Bona Fide Security Purposes

Several commentators suggested that entertainment use by a specified individual of an aircraft should not be treated as entertainment within the meaning of section 274 or subject to section 274(e)(2)(B) if there is a business need to use the aircraft to provide security, pursuant to § 1.132–5(m). The proposed regulations do not adopt this comment. Section 1.132–5(m) merely computes the income inclusion for a fringe benefit. It reduces the income inclusion amount rather than eliminates it. It does not convert entertainment flights into business flights.

2. Definition of Expenses

a. Fixed Costs

To calculate the amount of expenses for entertainment use of an aircraft, Notice 2005–45 provides that taxpayers must take into account all of the expenses of maintaining and operating the aircraft. Commentators recommended that entertainment expenses should not include fixed costs such as depreciation. Commentators noted that the legislative history refers to ''aircraft operating costs'' and ''actual cost'' and interpreted this language to mean that costs should be limited to variable costs. H. Conf. Rept. 108–755 at 798. Some commentators have suggested that incremental costs are the only costs that should be disallowed.

The proposed regulations do not adopt these comments. Industry use of the term ''operating costs'' generally refers to all costs, fixed and variable, including depreciation claimed on the taxpayer's tax return. Therefore, the IRS and Treasury Department believe that the use of the term ''operating costs'' in the legislative history does not reflect Congressional intent to apply section 274(e)(2) to variable costs only. Moreover, the term ''aircraft operating costs'' in the legislative history is consistent with use of that term in *Sutherland Lumber*, in which it referred to fixed and variable costs for purposes of section 274(e)(2).

b. Depreciation

Commentators suggested that disallowing accelerated depreciation (including the additional first-year depreciation under, for example, sections 168(k), 1400L(b), and 1400N(d)) would result in excessive amounts disallowed in early years and is inconsistent with Congressional intent to provide incentives for purchasing aircraft. In response to these comments, the proposed regulations permit a taxpayer to elect to calculate depreciation on a straight-line basis over the class life of an aircraft for all of the taxpayer's aircraft for the current year and all future years when calculating the amount of disallowed expenses.

c. Aggregation of Aircraft

Notice 2005–45 permits taxpayers to calculate expenses separately for each aircraft or to aggregate the expenses of

aircraft of similar cost profiles. For example, the expenses of turboprop aircraft may be aggregated (but may not be aggregated with the expenses of a jet aircraft) and the expenses of a two-engine jet aircraft may be aggregated (but may not be aggregated with the expenses of a four-engine jet aircraft).

Commentators requested that the proposed regulations provide more details on the definition of cost profile. In response to these comments, the proposed regulations provide additional characteristics that define similar cost profiles. Specific comments are requested on the appropriateness of these characteristics in defining similar cost profiles and on other characteristics that may be useful in determining criteria for aggregating aircraft.

3. Allocation Methods

Notice 2005–45 provides an occupied seat hour or mile formula to allocate expenses to entertainment flights provided to specified individuals. The formula multiplies the hours or miles flown by an aircraft by the number of occupied seats. Then a taxpayer aggregates all fixed and variable expenses to determine the total expenses paid or incurred during the taxable year with respect to an aircraft (or aggregated aircraft) and divides the amount of total expenses by total occupied seat hours or miles to determine the cost per occupied seat hour or mile. Once a taxpayer determines this cost, the taxpayer uses the cost to determine the expenses allocable to each specified individual's entertainment flight.

Commentators expressed concern that this formula may not produce accurate results and is administratively burdensome. The proposed regulations retain the occupied seat hour or mile formula, which allows averaging of fixed and variable costs and yields a simple formula for determining the cost of one occupied seat hour or mile. It does not require a determination of whether a flight is for entertainment of specified individuals or other uses or an allocation of entertainment and other costs for a particular flight. Once the taxpayer determines the cost per occupied seat hour or mile, the disallowance calculation is relatively easy and results in a cost for each occupied seat hour or mile allocable to each entertainment flight taken by a specified individual.

Nevertheless, in response to commentators' concerns, the proposed regulations provide the option of allocating expenses on a flight-by-flight basis as an alternative to using the occupied seat mile or hour formula. Under the flight-by-flight method, a taxpayer may aggregate all expenses for the taxable year and divide the amount of total expenses by the number of flight hours or miles for the taxable year to determine the cost per hour or mile. The taxpayer allocates expenses to each flight by multiplying the number of miles or hours for the flight by the expense per hour or mile and allocates expenses for the flight to the passengers on the flight per capita.

4. Specified Individuals

Notice 2005–45 applies to entertainment use of an aircraft provided to a specified individual of a taxpayer by a party related to the taxpayer within the meaning of sections 267(b) or 707(b). The notice also defines a specified individual as the recipient of entertainment provided to a spouse or family member of the specified individual or to another person because of the person's relationship to the specified individual, cf. § 1.61–21(a)(4), and includes those entertainment flights within the potential disallowance of costs to the taxpayer. Commentators expressed concern that these provisions defined specified individual too broadly, exceeding the authority of the IRS and Treasury Department, and suggested that the definition be narrowed.

The proposed regulations do not adopt these comments. In the GOZA, Congress enacted technical corrections that clarify that the related party rules of sections 267(b) and 707(b) apply to section 274(e)(2). The IRS and Treasury Department conclude that Congress intended all entertainment flights to be subject to the section 274(e)(2) requirements. However, comments on how the regulations could define passengers aboard by virtue of a relationship with a specified individual are welcome. Finally, the proposed regulations define *officer* by reference to regulations at 17 CFR 240.16a–1(f) that implement section 16(a) of the Securities Exchange Act of 1934.

5. Other

a. Determination of Basis

The proposed regulations provide that, if an amount disallowed is allocable to depreciation, § 1.274–7 applies and the basis of the aircraft is not reduced for the amount of depreciation disallowed.

b. Allocation of Expenses Pro Rata

Numerous commentators inquired how taxpayers should allocate disallowed expenses between fixed and variable expenses. In response to these comments, the proposed regulations provide that the expense disallowance provisions apply to expenses on a pro rata basis.

c. Deadhead Flights

Notice 2005–45 provides that an aircraft returning empty from a flight after discharging passengers or traveling empty to pick up passengers (deadheading) is treated as having the same number and character of occupied seat hours or miles as the leg or legs of the trip on which passengers are aboard.

Commentators, citing confusion on the treatment of deadhead flights, have requested additional guidance, including safe harbors such as treating the empty flight as if it had the same composition as the prior or subsequent flight. The proposed regulations adopt these comments by providing more detail on how taxpayers should treat deadhead flights.

d. Leasing of Taxpayer Aircraft

Commentators requested guidance on the leasing of aircraft to unrelated third parties. In response to these requests, the proposed regulations provide guidance on the treatment of expenses allocable to taxpayers that charter their aircraft.

e. Aircraft as Entertainment Facilities

Notice 2005–45 addressed the treatment of expenses for the entertainment use of aircraft and did not address the effect of the amendment to section 274(e)(2) on the treatment of aircraft as entertainment facilities. Commentators asked how the entertainment facility disallowance under section 274(a)(1)(B) interacts with rules on aircraft used to provide specified individuals with entertainment.

Section 274(a)(1)(B) disallows all the expenses, direct and indirect, associated with the ownership and operation of an aircraft that is an entertainment facility, except for expenses for business travel and expenses that meet the exceptions of section 274(e). Thus, expenses for personal, nonentertainment travel (such as for medical purposes or attending funerals), as well as for entertainment travel, are disallowed, unless an exception such as 274(e)(2) applies.

The IRS and Treasury Department believe that Congress, in adding section 274(e)(2)(B), contemplated entertainment use of aircraft by specified individuals without specifically considering circumstances in which aircraft may be regarded as entertainment facilities. Therefore, these proposed regulations are limited to use of taxpayer-provided aircraft in

entertainment activities under section 274(a)(1)(A), and do not provide rules relating to the application of section 274(e)(2)(B) in circumstances under which aircraft may be regarded as entertainment facilities under section 274(a)(1)(B). Comments are requested on whether the IRS and Treasury Department should issue guidance on aircraft as entertainment facilities and the content of the guidance.

f. Fringe Benefit Consistency Rules

The proposed regulations relax the consistency rule of § 1.61–21(g)(14)(i) to permit taxpayers to value the entertainment use of aircraft by specified individuals under the fair market value rules of § 1.61–21(b), but continue to value flights for other employees and for specified individuals not traveling for entertainment using either the SIFL formula of § 1.61–21(g) or the general (fair market value) rule of § 1.61–21(b).

The proposed regulations preserve the consistency rule of § 1.61–21(g)(14)(i) with respect to particular groups of employees (specified and non-specified individuals) and with respect to non-entertainment flights. Thus, if an employer values the entertainment use of aircraft by one specified individual under the fair market value rules of § 1.61–21(b) in a calendar year, the employer must use the fair market value rules to value the entertainment use of aircraft by all specified individuals during that calendar year.

The existing consistency rules of § 1.61–21(g)(14)(i) continue to apply for valuing the entertainment use of aircraft for other employees (non-specified individuals) and for valuing the personal use of aircraft by specified individuals not traveling for entertainment purposes. Thus, if an employer values the personal use of aircraft by any other employee or the non-entertainment personal use of aircraft by any specified individual using the SIFL formula of § 1.61–21(g) in a calendar year, the employer must use the SIFL formula to value the personal use of aircraft by all other employees and the non-entertainment personal use of aircraft by all specified individuals during that calendar year. Similarly, if the employer values the personal use of aircraft by any other employee or the non-entertainment personal use of aircraft by any specified individual using the fair market value rules of § 1.61–21(b) in a calendar year, the employer must use the fair market value rules to value the personal use of aircraft by all other employees and the non-entertainment personal use of aircraft by all specified individuals during that calendar year.

g. Treatment as Compensation to Non-Specified Individuals

The proposed regulations clarify that in order for a taxpayer to meet the requirements of section 274(e)(2) for expenses treated as compensation, the taxpayer must include the proper amount as compensation to an employee on the taxpayer's return.

h. Section 162(m)

Notice 2005–45 provides that any amount for the entertainment use of an aircraft that is treated by the taxpayer as compensation to a specified individual who is also a covered employee is subject to section 162(m). Commentators disagreed with this conclusion. They opined that the deduction disallowance of section 274 relates to the expenses of the aircraft, not amounts treated as income to the employee, and that, under § 1.162–25T, the expenses associated with providing the aircraft are not deducted by the employer as compensation. Thus, according to the commentators, expenses treated as compensation for purposes of section 274(e)(2) should not be subject to the deduction limitation of section 162(m). However, the IRS and Treasury Department believe that the deduction limitation of section 162(m) applies to amounts treated as compensation for purposes of section 274(e)(2). The legislative history of section 162(m) provides that the deduction limitation of section 162(m) applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash regardless of whether the remuneration is deducted as compensation. H.R. Conf. Rep. No. 103–213 (1993) at 585 (993–3 CB 463). Any amount included in an employee's income for entertainment flights is remuneration for services and therefore is subject to section 162(m).

i. Entertainment Sold to Customers

Commentators requested clarification on whether section 274(e)(8), the exception to section 274(a) for entertainment sold to customers, applies to a taxpayer's expenses for providing an aircraft for the entertainment use of specified individuals. A commentator asserted that section 274(e)(8) excepts expenses of a flight from the section 274(a) disallowance to the extent a passenger pays full and fair consideration. The commentator suggested that expenses are excepted from the section 274(a) disallowance under section 274(e)(8) in three circumstances common in business aviation: (1) A lease of an aircraft without a pilot at a fair market value lease rate; (2) payment of a fair market value charter rate for an aircraft the taxpayer has enrolled under a charter certificate held by a charter company; and (3) payment of expenses allowed to be reimbursed in a time-sharing agreement under Federal Aviation Regulation 91.501(d), 14 CFR 91.501(d).

The proposed regulations do not address these issues, as rules implementing the section 274(e)(8) exception are provided in § 1.274–2(f)(2)(ix). Therefore, it is outside the scope of these proposed regulations on the exceptions under section 274(e)(2) and (9). As stated in § 1.274–2(f)(2)(ix), section 274(e)(8) applies only to taxpayers that are in the trade or business of providing entertainment to customers, and only to entertainment sold to customers. Therefore, the exception does not apply to expenses paid or incurred for entertainment provided to individuals by taxpayers that are not in the trade or business of providing entertainment.

j. Charter Rate Safe Harbor

As an alternative to determining actual expenses, the IRS and Treasury Department are considering whether the regulations should permit taxpayers to determine the amount of their expenses paid or incurred for entertainment flights by reference to charter rates. Under such a safe harbor, taxpayers could elect to treat as the amount of expenses for entertainment flights an undiscounted charter rate for each flight in lieu of calculating the actual expenses of each entertainment flight provided to specified individuals. Under the safe harbor, the undiscounted charter rate for the flight would be allocated to the individuals on the flight in lieu of the occupied seat or flight-by-flight allocation methods.

Under the charter rate method being considered, an undiscounted charter rate would be based on the amount that a person would pay in an arms-length transaction to charter the same or comparable aircraft for the same or comparable flight. A taxpayer would have to show that a charter rate used to value flights is a substantiated actual, published, undiscounted charter rate charged to the general public within 10 days before or after the taxpayer's flight by a qualified chartering company. A qualified chartering company would be a chartering company unrelated to the taxpayer (within the meaning of section 267(b) or 707(b)) that is in the trade or business of chartering aircraft and that operates and charters 10 or more aircraft

to the general public during the taxable year. Leaseback arrangements or rates charged for off-peak usage, aircraft downtime, or by employers to their employees would not qualify under the safe harbor. A qualified chartering company would not include a chartering company that charters any aircraft to or for the use of a person (or an employee of the person) that owns any aircraft used by the chartering company. If a taxpayer elects the safe harbor, the taxpayer would have to use it for all entertainment flights on all of the taxpayer's aircraft for the current and all subsequent taxable years unless the taxpayer makes a proper revocation.

The proposed regulations do not include the safe harbor. Nonetheless, comments are requested on whether such a safe harbor, or other safe harbors, should be adopted. Comments are also requested on the availability of substantiated actual, published, undiscounted charter rates charged to the general public by companies that meet the requirements of a qualified chartering company.

Taxpayers may not use a charter rate to determine expenses allocable to entertainment flights unless and until a rule is adopted in final regulations.

Proposed Effective Date

The regulations, as proposed, apply to any taxable year beginning on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules in these proposed regulations or those provided in Notice 2005–45 for taxable years beginning before the publication of the Treasury decision. If Notice 2005–45 and the proposed regulations include different rules for the same particular issue, then the taxpayer may rely on either the rule set forth in Notice 2005–45 or the rule set forth in the proposed regulations. However, if the proposed regulations include a rule that was not included in Notice 2005–45, taxpayers may not rely on the absence of a rule in Notice 2005–45 to apply a rule contrary to the proposed regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for October 25, 2007, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Drafting Information

The principal authors of these proposed regulations are Michael A. Nixon and Christian T. Wood of the Office of Associate Chief Counsel (Income Tax & Accounting) and Lynne A. Camillo of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.274–9 also issued under 26 U.S.C. 274(o).* * *

Section 1.274–10 also issued under 26 U.S.C. 274(o).* * *

Par. 2. Section 1.61–21 is amended by revising paragraph (g)(14)(i) and (ii) and adding paragraph (g)(14)(iii) to read as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * *

(g) * * *

(14) * * *

(i) *Use by employer.* Except as otherwise provided in paragraph (g)(13) or paragraph (g)(14)(iii) of this section or in § 1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value any flight provided in a calendar year, the rule must be used to value all flights provided to all employees in the calendar year.

(ii) *Use by employee.* Except as otherwise provided in paragraph (g)(13) or (g)(14)(iii) of this section or in § 1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided to the employee by that employer in the calendar year.

(iii) *Exception for entertainment flights provided to specified individuals after October 22, 2004.* Notwithstanding the provisions of paragraph (g)(14)(i) of this section, an employer may use the general valuation rules of § 1.61–21(b) to value the entertainment use of an aircraft by a specified individual. An employer who uses the general valuation rules of § 1.61–21(b) to value any entertainment use of an aircraft by a specified individual in a calendar year must use the general valuation rules of § 1.61–21(b) to value all entertainment use of aircraft provided to all specified individuals during that calendar year.

(A) *Specified individuals defined.* For purposes of paragraph (g)(14)(iii) of this section, *specified individual* is defined in section 274(e)(2)(B) and § 1.274–9(b).

(B) *Entertainment defined.* For purposes of paragraph (g)(14)(iii) of this section, *entertainment* is defined in § 1.274–2(b)(1).

* * * * *

Par. 3. Section 1.274–9 is added to read as follows:

§ 1.274–9 Entertainment provided to specified individuals.

(a) *In general.* No deduction is allowed for expenses for entertainment provided to a specified individual (as defined in paragraph (b) of this section) except to the extent that the expenses do not exceed the amount of the expenses treated as compensation to the specified individual, as provided in section

274(e)(2)(B) and (9) and § 1.274–10. The amount disallowed is reduced by any amount that the specified individual reimburses a taxpayer for the entertainment.

(b) *Specified individual defined.* (1) A specified individual is an individual who is subject to section 16(a) of the Securities Act of 1934 with respect to the taxpayer, or an individual who would be subject to section 16(a) if the taxpayer were an issuer of equity securities referred to in that section. Thus, for example, a specified individual is an officer, director, or more than 10 percent owner of a corporation taxed under subchapter C or subchapter S, or a personal service corporation. A specified individual includes every individual who—

(i) Is the direct or indirect beneficial owner of more than 10 percent of any class of any registered equity (other than an exempted security);

(ii) Is a director or officer of the issuer of the security;

(iii) Would be the direct or indirect beneficial owner of more than 10 percent of any class of a registered security if the taxpayer were an issuer of equity securities; or

(iv) Is comparable to an officer or director of an issuer of equity securities.

(2) For partnership purposes, a specified individual includes any partner that holds more than a 10 percent equity interest in the partnership, or any general partner, officer, or managing partner of a partnership.

(3) For purposes of this section, *officer* has the same meaning as in 17 CFR § 240.16a–1(f).

(4) A specified individual includes a director or officer of a tax-exempt entity.

(5) A specified individual of a taxpayer includes a specified individual of a party related to the taxpayer within the meaning of section 267(b) or section 707(b).

(6) For purposes of section 274(a), a specified individual is treated as the recipient of entertainment provided to a spouse or family member of the specified individual or to another individual because of the relationship of the spouse, family member or other individual to the specified individual. Thus, expenses allocable to entertainment provided to the spouse, family member, or other individual are attributed to the specified individual for purposes of determining the amount of disallowed expenses.

(c) *Entertainment use of aircraft by specified individuals.* For rules relating to entertainment use of aircraft by specified individuals, see § 1.274–10.

(d) *Effective/applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.274–10 is added to read as follows:

§ 1.274–10 Special rules for aircraft used for entertainment.

(a) *Use of an aircraft for entertainment*—(1) *In general.* Under section 274(a) and this section, no deduction otherwise allowable under chapter 1 is allowed for expenses for the use of a taxpayer-provided aircraft for entertainment, except as provided in paragraph (a)(2) of this section.

(2) *Exceptions*—(i) *In general.* Paragraph (a)(1) of this section does not apply to deductions for expenses for business entertainment air travel or to deductions for expenses that meet the exceptions of section 274(e), § 1.274–2(f), and this section.

(ii) *Expenses treated as compensation*—(A) *Employees.* Section 274(a), paragraphs (a) through (d) of § 1.274–2, and paragraph (a)(1) of this section, in accordance with section 274(e)(2), do not apply (in the case of specified individuals, as provided in paragraph (a)(2)(ii)(C) of this section), to expenses for entertainment air travel provided to employees to the extent that a taxpayer—

(*1*) Properly treats the expenses with respect to the recipient of entertainment as compensation to an employee under chapter 1 and as wages to the employee for purposes of chapter 24; and

(*2*) Includes the proper amount in the employee's income under § 1.61–21.

(B) *Persons who are not employees.* Section 274(a), paragraphs (a) through (e) of § 1.274–2, and paragraph (a)(1) of this section, in accordance with section 274(e)(9), do not apply (in the case of specified individuals, as provided in paragraph (a)(2)(ii)(C) of this section), to expenses for entertainment air travel provided to persons who are not employees to the extent the expenses are includible in the income of those persons. This exception does not apply to any amount paid or incurred by the taxpayer that is required to be included in any information return filed by the taxpayer under part III of subchapter A of chapter 61 and is not so included.

(C) *Specified individuals.* Section 274(a) and paragraphs (a) through (d) of § 1.274–2, in accordance with section 274(e)(2)(B), do not apply to expenses for entertainment air travel of a specified individual to the extent that the expenses do not exceed the sum of—

(*1*) The amount treated as compensation under paragraph (a)(2)(ii)(A) of this section or reported as income under paragraph (a)(2)(ii)(B) of this section to the specified individual; and

(*2*) Any amount the specified individual reimburses the taxpayer.

(b) *Definitions.* The definitions in this paragraph (b) apply for purposes of this section.

(1) *Entertainment.* For the definition of entertainment for purposes of this section, see § 1.274–2(b)(1). Entertainment does not include personal travel that is not for entertainment purposes. For example, travel to attend a family member's funeral is not entertainment.

(2) *Entertainment air travel.* Entertainment air travel is any travel aboard a taxpayer-provided aircraft for entertainment purposes.

(3) *Business entertainment air travel.* Business entertainment air travel is any entertainment air travel aboard a taxpayer-provided aircraft that is directly related to the active conduct of the taxpayer's trade or business or related to an expenditure directly preceding or following a substantial and bona fide business discussion and associated with the active conduct of the taxpayer's trade or business. See § 1.274–2(a)(1)(i) and (ii). Air travel is not business entertainment air travel merely because a taxpayer-provided aircraft is used for the travel as a result of a bona fide security concern under § 1.132–5(m).

(4) *Taxpayer-provided aircraft.* A taxpayer-provided aircraft is any aircraft owned by, leased to, or chartered to, a taxpayer or any party related to the taxpayer (within the meaning of section 267(b) or section 707(b)).

(5) *Specified individual.* For rules relating to the definition of a specified individual, see § 1.274–9.

(c) *Amount disallowed.* The amount disallowed under this section for an entertainment flight by a specified individual is the amount of expenses allocable to the entertainment flight of the specified individual under paragraph (e)(2)(ii)(D), (e)(3)(ii), or (f)(3) of this section, reduced (but not below zero) by the amount the taxpayer treats as compensation under paragraph (a)(2)(ii)(A) of this section or reports as income under paragraph (a)(2)(ii)(B) of this section to the specified individual, plus any amount the specified individual reimburses the taxpayer.

(d) *Expenses taken into account under this section*—(1) *Definition of expenses.* In determining the amount of expenses taken into account under this section, a taxpayer must take into account all of the expenses of operating the aircraft, including all fixed and

variable expenses the taxpayer deducts in the taxable year. These expenses include, but are not limited to, salaries for pilots, maintenance personnel, and other personnel assigned to the aircraft; meal and lodging expenses of flight personnel; take-off and landing fees; costs for maintenance flights; costs of on-board refreshments, amenities and gifts; hangar fees (at home or away); management fees; costs of fuel, tires, maintenance, insurance, registration, certificate of title, inspection, and depreciation; and all costs paid or incurred for aircraft leased, or chartered, to or by the taxpayer.

(2) *Leases or charters to third parties.* Expenses allocable to a lease or charter of a taxpayer's aircraft to an unrelated third-party in a bona-fide business transaction for adequate and full consideration are not taken into account for purposes of the definition of expenses in paragraph (d)(1) of this section. Only expenses allocable to the charter period are not taken into account under this paragraph (d)(2).

(3) *Straight-line method permitted for determining depreciation disallowance under this section*—(i) *In general.* In lieu of the amount of depreciation deducted in the taxable year, solely for purposes of paragraph (d)(1) of this section, a taxpayer may elect to treat as its depreciation deduction the amount that would result from using the straight-line method of depreciation over the class life (as defined by section 168(g)(2) and taking into account the applicable convention under section 168(d)) of an aircraft, although the taxpayer uses another methodology to calculate depreciation for the aircraft under other sections of the Internal Revenue Code (for example, section 168). If the property is qualified property or 50-percent bonus depreciation property under section 168(k), qualified New York Liberty Zone property under section 1400L(b), or qualified Gulf Opportunity Zone property under section 1400N(d), depreciation for purposes of this straight-line election is determined on the unadjusted depreciable basis of the property. For purposes of this section, a taxpayer that elects to use the straight-line method and class life under this paragraph (d)(3) for any aircraft it operates must use that method for all taxpayer-provided aircraft it operates and must continue to use the method for the entire period the taxpayer uses any taxpayer-provided aircraft.

(ii) *Aircraft placed in service in earlier taxable years.* If the taxpayer elects to use this paragraph (d)(3) with respect to aircraft placed in service in taxable years before the current taxable year, the amount of depreciation is determined by applying the straight-line method of depreciation to the original cost (or, for property acquired in an exchange to which section 1031 applies, the basis of the aircraft as determined under section 1031(d)) and over the class life (taking into account the applicable convention under section 168(d)) of the aircraft as though the taxpayer used that methodology from the year the aircraft was placed in service.

(iii) *Manner of making and revoking election.* A taxpayer makes the election under this paragraph (d)(3) by filing an income tax return for the taxable year that determines the taxpayer's expenses for purposes of paragraph (d)(1) of this section by including depreciation as determined under this paragraph (d)(3). An election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

(4) *Aggregation of aircraft*—(i) *In general.* A taxpayer may aggregate the expenses of aircraft of similar cost profiles for purposes of calculating disallowed expenses under paragraph (c) of this section.

(ii) *Similar cost profiles.* Aircraft are of similar cost profiles if their operating costs per mile or per hour of flight are comparable. Aircraft must have the same engine type (jet or propeller) and the same number of engines to have similar cost profiles. Other factors to be considered in determining whether aircraft have similar cost profiles include, but are not limited to, payload, passenger capacity, fuel consumption rate, age, maintenance costs, and depreciable basis.

(e) *Allocation of expenses*—(1) *General rule.* Except as provided in paragraph (f)(4) of this section, for purposes of determining the expenses allocated to entertainment air travel of a specified individual under paragraph (a)(2)(ii)(C) of this section, a taxpayer must use either the occupied seat hours or miles method of paragraph (e)(2) of this section or the flight-by-flight method of paragraph (e)(3) of this section. A taxpayer must use the chosen method for all flights of all aircraft for the taxable year.

(2) *Occupied seat hours or miles method*—(i) *In general.* The occupied seat hours or miles method determines the amount of expenses allocated to a particular entertainment flight of a specified individual based on the occupied seat hours or miles for an aircraft for the taxable year. Under this method, a taxpayer may choose to use either occupied seat hours or miles for the taxable year to determine the amount of expenses allocated to entertainment flights of specified individuals, but must use occupied seat hours or miles consistently for all flights for the taxable year.

(ii) *Computation of the occupied seat hours or miles method.* The amount of expenses allocated to an entertainment flight taken by a specified individual is determined under the occupied seat hours or miles method by—

(A) Determining the total expenses for the year under paragraph (d)(1) of this section for the aircraft or group of aircraft (as determined under paragraph (d)(4) of this section), as applicable;

(B) Determining the total number of occupied seat hours or miles for the taxable year for the aircraft or group of aircraft by totaling the occupied seat hours or miles of all flights in the taxable year flown by the aircraft or group of aircraft, as applicable. The occupied seat hours or miles for a flight is the number of hours or miles flown for the flight multiplied by the number of seats occupied on that flight. For example, a flight of six hours with three passengers results in 18 occupied seat hours;

(C) Determining the cost per occupied seat hour or mile for the aircraft or group of aircraft, as applicable, by dividing the total expenses in paragraph (e)(2)(ii)(A) of this section by the total number of occupied seat hours or miles determined in paragraph (e)(2)(ii)(B) of this section; and

(D) Determining the amount of expenses allocated to an entertainment flight taken by a specified individual by multiplying the number of hours or miles of the flight by the cost per occupied hour or mile for that aircraft or group of aircraft, as applicable, as determined in paragraph (e)(2)(ii)(C) of this section.

(iii) *Allocation of expenses of multi-leg trips involving both business and entertainment legs.* A taxpayer that uses the occupied seat hours or miles allocation method must allocate the expenses of a trip by a specified individual that involves at least one segment for business and one segment for entertainment purposes between the business travel and the entertainment travel unless none of the expenses for the entertainment segment are disallowed. The entertainment cost of a multi-leg trip is the total cost of the flights (by occupied seat hours or miles) over the cost of the flights that would have been taken without the entertainment segment or segments.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (e)(2):

Example 1. (i) A taxpayer-provided aircraft is used for Flights 1, 2, and 3, of 5 hours, 5

hours, and 4 hours, respectively, during the Taxpayer's taxable year. On Flight 1, there are four passengers, none of whom are specified individuals. On Flight 2, passengers A and B are specified individuals traveling for entertainment purposes and passengers C and D are not specified individuals. Taxpayer treats $1,200 as compensation to A, and B reimburses Taxpayer $500. On Flight 3, all four passengers (A, B, E, and F) are specified individuals traveling for entertainment purposes. The Taxpayer treats $1,300 each as compensation to A, B, E, and F. Taxpayer incurs $56,000 in expenses for the operation of the aircraft for the taxable year. The aircraft is operated for 56 occupied seat hours for the period (four passengers times 5 hours or 20 occupied seat hours for Flight 1, plus four passengers times 5 hours or 20 occupied seat hours for Flight 2, plus four passengers times 4 hours or 16 occupied seat hours for Flight 3). The cost per occupied seat hour is $1,000 ($56,000/56 hours).

(ii) For purposes of determining the amount disallowed (to the extent not treated as compensation or reimbursed), $5,000 ($1,000 × 5 hours) each is allocable with respect to A and B for Flight 2, and $4,000 ($1,000 × 4 hours) each is allocable with respect to A, B, E, and F for Flight 3.

(iii) For Flight 2, because Taxpayer treats $1,200 as compensation to A, and B reimburses Taxpayer $500, Taxpayer may deduct $1,700 of the cost of Flight 2 allocable to A and B. The deduction for the remaining $8,300 cost allocable to entertainment provided to A and B on Flight 2 is disallowed (with respect to A, $5,000 less the $1,200 treated as compensation, and with respect to B, $5,000 less the $500 reimbursed).

(iv) For Flight 3, because Taxpayer treats $1,300 each as compensation to A, B, E, and F, Taxpayer may deduct $5,200 of the cost of Flight 3. The deduction for the remaining $10,800 cost allocable to entertainment provided to A, B, E, and F on Flight 3 is disallowed ($4,000 less the $1,300 treated as compensation to each specified individual).

Example 2. (i) G, a specified individual, is the sole passenger on an aircraft on a two-hour flight from City A to City B for business purposes. G then travels on a three-hour flight from City B to City C for entertainment purposes, and returns from City C to City A on a four-hour flight. G's flights have resulted in nine occupied seat hours (two for the first segment, plus three for the second segment, plus four for the third segment). If G had returned directly to City A from City B, the flights would have resulted in four occupied seat hours.

(ii) Under paragraph (e)(2)(iii) of this section, five occupied seat hours are allocable with respect to G's entertainment (nine total occupied seat hours minus the four occupied seat miles that would have resulted if the travel had been a roundtrip business trip without the entertainment segment). If Taxpayer's cost per occupied seat hour for the year is $1,000, $5,000 is allocated with respect to G's entertainment use of the aircraft ($1,000 × five occupied seat hours). The amount disallowed is $5,000 minus any amount the Taxpayer treats as compensation to G or that G reimburses Taxpayer.

(3) *Flight-by-flight method*—(i) *In general.* The flight-by-flight method determines the amount of expenses allocated to a particular entertainment flight of a specified individual on a flight-by-flight basis by allocating expenses to individual flights and then to a specified individual traveling for entertainment purposes on that flight.

(ii) *Allocation of expenses.* A taxpayer using the flight-by-flight method must aggregate all expenses (as defined in paragraph (d)(1) of this section) for the taxable year for the aircraft or group of aircraft (as determined under paragraph (d)(4) of this section), as applicable, and divide the total amount of expenses by the number of flight hours or miles for the taxable year for that aircraft or group of aircraft, as applicable, to determine the cost per hour or mile. Expenses are allocated to each flight by multiplying the number of miles or hours for the flight by the cost per hour or mile. The expenses for the flight are then allocated to the passengers on the flight per capita. Thus, if three of five passengers are traveling for business and two passengers are specified individuals traveling for entertainment purposes, and the total expense allocated to the flight is $10,000, the expense allocable to each specified individual is $2,000.

(f) *Special rules*—(1) *Determination of basis.* If an amount disallowed is allocable to depreciation under paragraph (f)(2) of this section, the rules of § 1.274–7 apply. In that case, the basis of an aircraft is not reduced for the amount of depreciation disallowed under this section.

(2) *Pro rata disallowance.* The expense disallowance provisions of this section are applied on a pro rata basis to all of the expenses disallowed by this section.

(3) *Deadhead flights.* (i) For purposes of this section, an aircraft returning without passengers after discharging passengers or flying without passengers to pick up passengers (deadheading) is treated as having the same number and character of passengers as the leg of the trip on which passengers are aboard for purposes of the allocation of expenses under paragraphs (e)(2) or (e)(3) of this section. For example, when an aircraft travels from point A to point B and then back to point A, and one of the legs is a deadhead flight, for determination of disallowed expenses, the aircraft is treated as having made both legs of the trip with the same passengers aboard for the same purposes.

(ii) When a deadhead flight does not occur within a roundtrip flight, but occurs between two unrelated flights involving more than two destinations (such as an occupied flight from point A to point B, followed by a deadhead flight from point B to point C, and then an occupied flight from point C to point A), the allocation of passengers and expenses to the deadhead flight occurring between the two occupied trips is based on the number of passengers on board for the two occupied legs of the flight, the character of the passengers on board (entertainment or nonentertainment purpose) and the length in hours or miles of the two occupied legs of the flight.

(g) *Effective/applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–11445 Filed 6–14–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–251–FOR]

Kentucky Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky Abandoned Mine Land Reclamation (AMLR) Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment makes several revisions to Kentucky's AMLR Plan and is intended to update and improve the effectiveness of the AMLR plan. Kentucky submitted the amendment in response to the passage of the Surface Mining Control and Reclamation Act Amendments of 2006. This document gives the times and locations that the Kentucky program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., e.s.t., July 16, 2007. If requested, we will hold a public

hearing on July 10, 2007. We will accept requests to speak until 4 p.m., e.s.t., on July 2, 2007.

ADDRESSES: You may submit comments, identified by ''KY–251–FOR/ Administrative Record No. K–74'' by any of the following methods:

- *E-mail: bkovacic@osmre.gov.*
- *Mail/Hand Delivery:* William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8400.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number ''KY–251–FOR/Administrative Record No. K–74'' for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Kentucky program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Lexington Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Lexington Field Office. In addition, you may receive a copy of the submission during regular business hours at the following location: Department for Natural Resources, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Submission
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

The Abandoned Mine Land (AML) Reclamation Program was established by Title IV of SMCRA (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each active coal mine to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Kentucky AMLR Plan on May 18, 1982. You can find background information on the Plan, including the Secretary's findings, the disposition of comments, and the approval of the Plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky AMLR Plan and amendments to the plan at 30 CFR 917.20 and 917.21.

II. Description of the Submission

By letter dated April 23, 2007, Kentucky sent us a proposed amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative ([KY–251–FOR], Administrative Record No. K–74). With the passage of the Tax Relief and Health Care Act of 2006, Public Law 109–432 containing amendments to SMCRA, the Kentucky General Assembly enacted corresponding amendments to the Kentucky Revised Statutes at Chapter 350. The full text of the program amendment is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes follows.

Kentucky enacted Senate Bill 187 on February 21, 2007, to create a new section of the Kentucky Revised Statutes (KRS) Chapter 350 to allow the Environmental and Public Protection Cabinet (Cabinet) to do the following: expend for reclamation projects which are of a lower priority, if done in conjunction with a project assigned a higher priority; amend KRS 350.550 to delete use of Abandoned Mine Land funds for studies conducted by state agencies; amend KRS 350.555 to allow for expenditure on a reclamation project located adjacent to one already assigned a priority by the cabinet; delete research and development, work on public facilities, and development of publicly owned lands as a priority; amend KRS 350.560 to delete restriction on the use of funds allocated to the Commonwealth by the Secretary of the Interior; amend KRS 350.575 to prohibit a lien filed against a property owner who did not consent to mining operations requiring reclamation; amend KRS 350.597 to retain up to 30% of the funds allocated to Kentucky in a special trust fund; and to include the 2006 amendments to the Surface Mining Reclamation and Control Act in the citation.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kentucky AMLR Plan. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: KY–251–FOR/Administrative Record No. KY–74'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on July 2, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under

FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 4, 2007.

Michael K. Robinson,

Acting Regional Director.

[FR Doc. E7–11586 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DoD–2007–OS–0041]

[RIN 0790–AI21]

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to update current policies and procedures to reflect the DoD FOIA Program as prescribed by Executive Order 13392. The proposed changes will ensure appropriate agency disclosure of information, and offer consistency with the with the goals of section 552 of title 5, United States Code.

DATES: Comment must be received on or before August 14, 2007. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submission from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. James Hogan (703) 696–4699.

SUPPLEMENTARY INFORMATION:

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

Executive Order 12630, ''Government Actions and Interference With Constitutionally Protected Property Rights''

It has been certified that this rule does not:

(1) Place a restriction on a use of private property;

(2) Involve a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property; or

(3) Regulate private property use for the protection of public health or safety.

Executive Order 12866, ''Regulatory Planning and Review''

It has been certified that this rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks''

It has been certified that this rule does not present any environmental health or safety effects on children.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

National Environmental Policy Act

It has been certified that this rule does not significantly affect the quality of the human environment.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is proposed to be revised to read as follows.

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.

285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Update policies and responsibilities for implementing the DoD FOIA Program in accordance with 5 U.S.C. 552 (commonly known as the ''FOIA'').

(b) Continues to authorize 32 CFR part 286 to implement the FOIA Program.

(c) Implements E.O. 13392 within the Department of Defense.

(d) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53.[1]

§ 285.2 Applicability and scope.

This part applies to:

[1] Copies of DoD Directives, Instructions, and Publications may be obtained at *http://www.dtic.mil/whs/directives/.*

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) National Security Agency/Central Security Service records, unless the records are exempt according to 50 U.S.C. 402.

(c) Defense Intelligence Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency records, unless the records are exempt according to 50 U.S.C. 403–5e, 10 U.S.C. 424 and 455, or other applicable law.

§ 295.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with the DoD responsibility to protect national security and other sensitive DoD information.

(b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, according to the procedures established by 5 U.S.C. 552, DoD records requested by a member of the public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for DoD information and records under established procedures and practices.

(e) Release DoD records to the public unless those records are exempt from disclosure as outlined in 5 U.S.C. 552.

(f) Process requests by individuals for access to records themselves contained in a Privacy Act system of records according to the procedures set forth in 32 CFR part 310 and this part, as amplified by 32 CFR part 286.

(g) Provide FOIA requesters with citizen-centered ways to learn about the FOIA process, about DoD records that are publicly available, and about the status of a FOIA request and appropriate information about the DoD response.

§ 285.4 Responsibilities.

(a) The Director, Administration and Management (DA&M), shall:

(1) Serve as the DoD Chief FOIA Officer in accordance with E.O. 13392.

(2) Direct and oversee the DoD FOIA Program to ensure compliance with the policies and procedures that govern administration of the program.

(3) Designate the FOIA Public Liaisons for the Department of Defense in accordance with E.O. 13392. The FOIA Public Liaison for OSD, the Chairman of the Joint Chiefs of Staff, and the Combatant Commands shall be appointed from the Defense Freedom of Information Policy Office (DFOIPO).

(4) Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by 5 U.S.C., and other reports as required by E.O. 13392.

(5) Serve as the appellate authority for appeals to the decisions of the respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the DoD Field Activities (listed in 32 CFR part 286), and the Combatant Commands. The DA&M or Washington Headquarters Services (WHS) staff.

(6) Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(b) The Director, WHS, under the authority, direction, and control of the DA&M, shall administer the FOIA Program, inclusive of training, for OSD and the Chairman of the Joint Chiefs of Staff.

(c) The General Counsel of the Department of Defense shall:

(1) Provide uniformity in the legal interpretation of this part.

(2) Ensure affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or Congressional interest, or of interest to senior DoD officials.

(3) Establish procedures to centralize processing of FOIA litigation documents when deemed necessary.

(d) The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

(e) The Heads of the DoD Components shall:

(1) Internally administer the DoD FOIA Program; publish any instructions necessary for the administration of this part within their Components that are not prescribed by this part or by other DA&M issuances in the **Federal Register.**

(2) Serve as, or appoint another Component official as, the FOIA appellate authority for the Component.

(3) Establish one or more FOIA Requester Service Centers as prescribed by E.O. 13392.

(4) Submit names of personnel to the DA&M for designation as FOIA Public Liaisons.

(5) Ensure their respective chains of command, affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest, or of interest to senior DoD officials.

(6) Conduct training on the provisions of this part, 5 U.S.C. 552, and 32 CFR part 286 for officials and employees who implement the FOIA.

(7) Submit to DFOIPO inputs to the DoD FOIA Annual Report prescribed in 32 CFR part 286 and E.O. 13392.

(8) Make records specified in 5 U.S.C. 552(a)(2), unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities, according to rules published in the **Federal Register**. These records shall be made availale to the public in both hard copy and electronic formats.

(9) Maintain and make current indices of all records available for public inspection and copying, a required by 5 U.S.C. 552(a)(2).

§ 285.5 Information requirement.

The reporting requirements of 32 CFR part 286 have been assigned Report Control Symbol D–DA&M(A)1365 in accordance with DoD 8910.1–M.

Dated: June 11, 2007

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2950 Filed 6–14–07; 8:45 am]

BILLING CODE 5401–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–031]

RIN 1625–AA00

Safety Zone; Roostertail Fireworks, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This Zone is intended to restrict vessels

from portions of the Detroit River during the Roostertail Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before July 2, 2007.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207. U.S. Coast Guard Sector Detroit maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–07–031), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Sector Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Roostertail Fireworks display. The fireworks display will occur between 9 p.m. and 11 p.m. on July 21, 2007.

The safety zone for the July 21, 2007 fireworks will encompass all waters south and west of the Roostertail Restaurant on the North shore of the Detroit River within a 300 foot radius of the fireworks barge located at 42–21′16.67″ N; 082–58′20.41″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Detroit River between Detroit and Belle Isle near the Roostertail Restaurant between 9 p.m. and 11 p.m. on July 21, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 2 hours. Vessel traffic can pass safely around the safety zone. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313)–

568–9580. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Proposed Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–031 to read as follows:

§ 165.T09–031 Safety Zone; Roostertail Fireworks, Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: All waters south and west of the Roostertail Restaurant on the North shore of the Detroit River within a three hundred foot radius of the fireworks barge located at 42–21′16.67″ N; 082–58′20.41″ W. (NAD 83).

(b) *Effective period.* This regulation is effective from 9 p.m. until 11 p.m. on July 21, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''designated on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated on-scene representative.

Dated: May 24, 2007.

P.W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E7–11535 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–016]

RIN 1625–AA00

Safety Zone; Marine City Maritime Festival Fireworks, St. Clair River, Marine City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the St. Clair River, Marine City, Michigan. This zone is intended to restrict vessels from portions of the St. Clair River during the Marine City Maritime Festival Fireworks Display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before July 16, 2007.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207. U.S. Coast Guard Sector Detroit maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207; (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–06–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Sector Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Marine City Maritime Festival Fireworks display. The fireworks display will occur between 9:30 p.m. (local) and 11:30 p.m. (local), September 22, 2007. If this event does not take place at the scheduled time and date due to adverse weather, the fireworks display will occur between 9:30 p.m. (local) and 11:30 p.m., September 23, 2007.

The safety zone for the fireworks will encompass all waters of the St. Clair River enclosed by a line connecting the following points: 42–42–51.5N/082–29–13.97W; 42–43–07.55N/082–29–08.12W; 42–43–04.93N/082–28–54.11W; 42–42–48.58N/082–29–00.81W. This safety zone is located in the St. Clair River, east of the lighthouse in Marine City, MI, near the center of the river. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have

a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River from 9:30 p.m. (local) to 11:30 p.m. (local) on September 22, 2007. If this event does not take place at the scheduled time and date due to adverse weather, this rule will affect the owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River from 9:30 p.m. (local) to 11:30 p.m. (local) on September 23, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 2 hours. Vessel traffic can pass safely around the safety zone. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Proposed Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–016 to read as follows:

§ 165.T09–016 Safety Zone; Marine City Maritime Festival Fireworks, St. Clair River, Marine City, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of the St. Clair River, off of Marine City, MI, bounded by straight lines connecting the following points: 42–42–51.5N/082–29–13.97W; 42–43–07.55N/082–29–08.12W; 42–43–04.93N/082–28–54.11W; 42–42–48.58N/082–29–00.81W (NAD 83). This safety zone is located in the St. Clair River, east of the lighthouse in Marine City, MI, near the center of the river.

(b) *Effective period.* This rule is effective from 9:30 p.m. on September 22, 2007 to 11:30 p.m. on September 23, 2007. In the event that the fireworks are cancelled due to inclement weather on September 22, then the rule will be effective from 9:30 p.m. to 11:30 p.m. on September 23, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''designated on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated on-scene representative.

Dated: May 15, 2007.

P. W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E7–11536 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–017]

RIN 1625–AA00

Safety Zone; St. Mary's River, Sault Ste. Marie, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone for the annual River Rampage Offshore Power Boat Races on the St. Mary's River. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with high speed vessels. This safety zone is intended to restrict recreational vessel traffic from a portion of the St. Mary's River during the last week of July.

DATES: Comments and related materials must reach the Coast Guard on or before July 16, 2007.

ADDRESSES: You may mail comments and related material to Coast Guard Sector Sault Ste. Marie, 337 Water Street, Sault Ste. Marie, MI 49783. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Sault Ste. Marie between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact Commander Reed Stephenson, U.S. Coast Guard Sector Sault Ste. Marie, at (906) 635–3220.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–07–017], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a public meeting (see **ADDRESSES**) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This permanent safety zone is necessary to ensure the safety of waterways users and the event participants from hazards associated with waterways racing. Based on accidents that have occurred in other Captain of the Port zones, and the high-speed hazards of racing, The Captain of the Port Sault Ste. Marie has determined boat racing in close proximity to other watercraft poses significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, and high speed craft could easily result in serious injuries or fatalities. Establishing a safety zone to control

recreational vessel movement around the location of the raceway will help to ensure the safety of persons and property at these events and help minimize the associated risks. Prior to the start of each race heat and/or practice session, the Patrol Commander will contact VTS Sault Ste. Marie to identify any commercial traffic that is either upbound or downbound on the St. Mary's River. If a commercial vessel is close to clearing the locks downbound, or approaching Nine Mile Point upbound, the VTS will advise the Patrol Commander and the event will be delayed until the vessel(s) clear the area. The Coast Guard has not received notice of any impact caused by the safety zone created for this event in past years.

Discussion of Proposed Rule

The safety zone is established on the St. Mary's River, adjacent to Sault Ste. Marie, MI. The safety zone will encompass all waters of the St. Mary's River within the following coordinates: 46°29′48″ N, 084°18′75″ W, then northeast to 46°29′69″ N, 084°18′24″ W, then southeast to 46°29′32″ N, 084°17′87″ W, then southwest to 46°29′19″ N, 084°18′11″ W. This includes all waters encompassed between two lines, one line running northeast from Welch's Dock for 1,000 yards and one line running northeast from the Sault Ste. Marie Sugar Island Ferry Dock for 500 yards. This safety zone will be enforced the last weekend in July with the following Monday as a rain date from sunrise to termination of the event. All geographic coordinates are North American Datum of 1983 (NAD 83).

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are affected as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Proposed Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.937 to read as follows:

§ 165.937 Safety Zone; Annual River Rampage Offshore Power Boat Races in the Captain of the Port Sault Ste. Marie Zone.

(a) *Location.* The safety zone is established for the waters of the St. Mary's River, adjacent to Sault Ste. Marie, MI. The safety zone will encompass all waters of the St. Mary's River within the following coordinates: 46°29′48″ N, 084°18′75″ W, then northeast to 46°29′69″ N, 084°18′24″ W, then southeast to 46°29′32″ N, 084°17′87″ W, then southwest to 46°29′19″ N, 084°18′11″ W. [DATUM: NAD 83].

(b) *Enforcement date.* Last weekend in July with the following Monday as a rain date; sunrise to termination of event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light or other means, the operator shall proceed as directed.

(3) Recreational vessels may request permission from the Captain of the Port Sault Ste. Marie to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Sault Ste. Marie on Channel 16, VHF–FM.

(4) Marine Event Permits (CG–4423) will still need to be sent to U. S. Coast Guard Sector Sault Ste. Marie, MI.

(c) *Notice of annual enforcement period.* The Captain of the Port Sault Ste. Marie will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). The COTP may also issue notices in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section will be enforced each year.

Dated: May 10, 2007.

E.Q. Kahler,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.

[FR Doc. E7–11539 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV14

Migratory Bird Permits; Religious or Spiritual Use of Feathers by Native Americans

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; notice of intent to prepare an environmental assessment; request for comments and information.

SUMMARY: The U.S. Fish and Wildlife Service is considering amending its migratory bird regulations to allow Native Americans to acquire parts and feathers from birds other than eagles for religious or spiritual use. No current regulations govern the acquisition and possession of migratory bird parts and feathers of birds other than eagles for Native American religious or spiritual use. We have a compelling interest in protecting the traditional religious and spiritual resource values of Native Americans as part of our trust relationship with federally recognized Native American tribes. We recognize the need to balance this compelling reason against the equally compelling basis for the Migratory Bird Treaty Act. We seek information necessary to prepare an environmental assessment under the National Environmental Policy Act and its implementing regulations for a possible proposed rule.

DATES: To ensure consideration, we must receive your written comments and suggestions on or before August 14, 2007.

ADDRESSES: *Viewing Comments:* If you wish to view the complete file for this action, including comments and materials submitted by others, you may call (612) 713–5436 to make an appointment, during normal business hours, to view materials at the U.S. Fish and Wildlife Service, 1 Federal Drive, Ft. Snelling, MN 55111.

Submitting Comments: When submitting comments, refer to RIN 1018–AV14 and please include your name and return address. Please submit your comments by only one of the following methods:

1. *U.S. Mail:* Andrea Kirk, Permits Administrator, Migratory Birds (use address above);

2. *E-mail: otherfeathers@fws.gov;*

3. Submit comments via *http://www.regulations.gov* and reference RIN 1018–AV14; or

4. *Fax:* (612) 713–7179.

FOR FURTHER INFORMATION CONTACT: Andrea Kirk, Permits Administrator, Migratory Birds—Region 3, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), are the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Activities with migratory birds are prohibited unless specifically authorized by regulation. Regulations governing the issuance of permits for migratory bird use are authorized by the MBTA and are found in title 50, Code of Federal Regulations, parts 10, 13, 21, and 22. According to 50 CFR 21.11, permits are required for most actions involving ''any migratory bird, or the parts, nests, or eggs of such bird.''

The MBTA contains no express provisions regarding the religious/spiritual use of migratory bird feathers. However, we recognize the significance of the parts and feathers to Native American religious/spiritual practices under the American Indian Religious Freedom Act (42 U.S.C. 1996; AIRFA), a policy statement issued by Secretary of the Interior C.B. Morton in 1975, and our 1994 Native American Policy. The American Indian Religious Freedom Act (AIRFA), passed in 1978, clarifies U.S. policy pertaining to the protection of Native American religious freedom. AIRFA acknowledges prior infringement on the right of freedom of religion for Native Americans and clearly states that laws passed for other purposes are not meant to restrict the rights of Native Americans. The Morton policy statement provides Native Americans protection from Federal prosecution, harassment, or other interference for their possession, transport, use, donation, exchange, or loan of the feathers of federally protected species without compensation. The Morton policy statement also protects Native Americans who wish to possess bird parts and/or feathers to be worked on by tribal craftsmen for eventual use in religious/spiritual activities and allows the transfer of parts and/or feathers to tribal craftsmen without charge.

Our 1994 Native American Policy states that we must expedite processing and distribution of animal parts to Native Americans. Between 1990 and 2000, our National Eagle Repository distributed eagle parts and feathers to enrolled tribal members. Regulations governing permits for use of eagle parts and feathers are in 50 CFR Part 22. The Repository also distributed migratory bird parts and feathers from birds other than eagles to enrolled tribes. We conducted this distribution on an ad-hoc basis under the authority of 50 CFR 21.27, Special Purpose Permits, with no criteria or conditions specific to Native American religious or spiritual use. In 1999, we temporarily suspended distribution of non-eagle feathers, due to administrative resource constraints. We now intend to prepare an environmental assessment for a possible proposed regulation for the legal acquisition by Native Americans of non-eagle feathers for religious/spiritual use.

Environmental Assessment

We intend to prepare an assessment in order to analyze the potential impacts of various alternatives for establishing a legal mechanism for the acquisition of non-eagle feathers by Native Americans for religious/spiritual purposes. We will assess potential impacts on the natural and human environment that may result from different alternatives for legalizing the acquisition of these feathers, including impacts to Native American culture and religion. We particularly solicit comments on the following topics (most of these are discussed further following the list):

(1) The source(s) of the parts and feathers that we would make available;

(2) What criteria or conditions we should establish for individuals to be eligible to receive the migratory bird parts and feathers;

(3) How different means of legal acquisition may affect Native American tribes;

(4) How Native American tribes could be affected if we extend such authorization to other persons in addition to enrolled members of federally recognized Native American tribes;

(5) The extent of Native American demand for the parts and feathers;

(6) Whether the types of feathers being requested should be limited to those historically significant to the tribe acquiring them;

(7) Which species of migratory birds are most valuable for Native American religious/spiritual purposes;

(8) Potential impacts to migratory bird populations and other wildlife; and

(9) Other concerns the public may have related to this initiative.

Further discussion of selected items from above list follows:

(1) *Sources.* The sources of the parts and feathers to be made available is one of the primary concerns of this notice. The merits of centralized availability, such as the National Eagle Repository, versus decentralized availability, the extent to which tribes will have access and input into the source availability and eventual acquisition, and the various avenues for acquiring the feathers and parts are issues upon which we seek comments, suggestions, and guidance from interested parties.

(2) *Eligibility.* The MBTA, unlike the Bald and Golden Eagle Protection Act (16 U.S.C. 668a), does not provide for possession of migratory birds for religious/spiritual purposes by Native American tribes, regardless of whether or not they are members of recognized tribes. However, we have traditionally limited access to migratory birds and their parts to enrolled members of recognized tribes. We seek input on the potential impacts of providing legal access to non-eagle feathers for religious/spiritual use to individuals other than enrolled members of recognized tribes, including impacts to enrolled tribal members, members of non-recognized tribes, or other affected parties.

(3) *Means.* We will look favorably upon methods that involve decentralized availability and recognize tribal autonomy. We seek a solution that will uphold the MBTA without placing a burden on our resources.

(4) *Demand.* We seek input, suggestions, and comments on possible uses, the frequency and pervasiveness of these uses, and an estimation of the

demand upon the resource for these uses.

(5) *Wildlife Population and Habitat Impacts.* We do not expect to authorize any means of acquisition that would affect migratory bird or wildlife populations or impact wildlife habitat. We do not anticipate take from the wild of live birds through hunting or any other method. However, we seek input, comments, and suggestions on this issue.

Authority: The authorities for this notice are the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668a).

Dated: May 29, 2007.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–11559 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 115
Friday, June 15, 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

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture is renewing the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers and other methods of creating new farming and ranching opportunities. This notice invites nominations for persons to serve on the Committee.

DATES: We will consider nominations we receive by July 16, 2007.

ADDRESSES: We invite you to submit nominations for Committee members. You may submit nominations to: Mark Falcone, Designated Federal Official (DFO) for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; Fax (202) 690–1117; or e-mail *mark.falcone@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: As required by Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L, 102–554), the Secretary of Agriculture established the Committee to advise the Secretary on: (1) Development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers), (2) methods of maximizing the number of new farming and ranching opportunities created through the program, (3) methods of encouraging States to participate in the program, (4) administration of the program, and (5) other methods of creating new farming or ranching opportunities.

The law requires that members of the Committee be representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

USDA Departmental Regulation 1042–119, dated November 25, 1998, first established the Committee and designated FSA to provide support. One-half of the Committee membership was replaced when the Committee charter was last renewed on November 16, 2005. Approximately one-third of the 20 existing members will be replaced when the charter is renewed in November 2007. We are now accepting nominations of individuals to serve for a 2-year term on the Committee. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years. As a result, there will be a vacancy in at least three groups: Commercial lenders, other entities or persons, and farmers and ranchers. Appointments and reappointments to the Committee will be made in the fall of 2007 and all nominees will be notified in writing at that time.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas and provide advice on ways to increase opportunities for beginning farmers and ranchers. Members discuss various issues and draft recommendations, which are submitted to the Secretary in writing.

Nominations are being sought through the media, this **Federal Register** notice, and other appropriate methods. Persons nominated for the Committee will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (Form AD–755). Submission of this form will constitute a nomination. Letters of recommendation may also be submitted, but should not be solicited or obtained from USDA officials employed in Washington DC. The questionnaire is available on the Internet at *http://www.fsa.usda.gov/Internet/FSA_File/ad755.pdf*. Questionnaires can be completed on-line, however, nominees must print their completed forms from the Adobe PDF file, sign, and mail or fax them to the above address or fax number. The form may also be requested by telephone, fax, or e-mail. All inquiries about the nomination process and submissions of the AD–755 should be made to Mark Falcone or Sam Snyder at the addresses and numbers listed above.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, consistent with USDA policies, will be followed in making all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Signed in Washington, DC, on June 4, 2007.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E7–11544 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss various beginning farmer issues.

DATES: The public meetings will be held July 9–10, 2007. The first meeting, on July 9, 2007, will start at 8 a.m. and end by 5:30 p.m. The second meeting, on July 10, 2007, will begin at 8 a.m. and end by 6 p.m. All times noted are Central Standard Time (CST). See Supplementary Information for oral presentation submission date.

ADDRESSES: All meetings will be held at the Embassy Suites Des Moines-On the River, 101 East Locust Street, Des Moines, Iowa, (515) 244–1700. Written requests to make oral presentations must be sent to: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail: *mark.falcone@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture (the Secretary) to establish the Committee for the purpose of advising the Secretary on the following:

(1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929). Under the program, Federal and State beginning farmer programs provide financial assistance to beginning farmers and ranchers;

(2) Methods of maximizing the number of new farming and ranching opportunities created through the program;

(3) Methods of encouraging States to participate in the program;

(4) The administration of the program; and

(5) Other methods of creating new farming or ranching opportunities.

The Committee meets annually and all meetings are open to the public. The duration of the Committee is indefinite. Earlier meetings of the Committee, beginning in 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers. Members discussed various issues and drafted numerous recommendations, which were provided to the Secretary.

Agenda items for the July 2007 meetings include:

(1) Discussions concerning provisions of the 2007 Farm Bill legislative proposals to assist beginning farmers and ranchers;

(2) A young farmer panel discussion;

(3) Comments from the Director of Iowa's Beginning Farmer Center;

(4) Status of previous committee recommendations.

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral presentation should submit a request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than July 5, 2007. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:15 p.m. CST on July 9, 2007.

Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by July 5, 2007.

Signed in Washington, DC, on June 4, 2007.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E7–11545 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0015]

Notice of Request for Revision of a Currently Approved Information Collection (Specified Risk Materials)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of an approved information collection concerning the regulatory requirements relating to specified risk materials in cattle to reflect the most recent plant data, which support a finding of more total burden hours.

DATES: Comments on this notice must be received on or before August 14, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- 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.*
- 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.regulation.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–2007–0015 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document, 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, except Federal holidays. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp.* Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail address, and telephone number—on the Internet may leave the information off their comments.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th

Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Specified Risk Materials.

OMB Number: 0583–0129.

Expiration Date of Approval: 10/31/2007.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). FSIS protects the public by verifying that meat products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting revision of an approved information collection addressing paperwork requirements specified in the regulations relating to specified risk materials (SRMs) in cattle.

FSIS requires that official establishments that slaughter cattle or process carcasses or parts of cattle develop written procedures for the removal, segregation, and disposition of specified risk materials. The Agency also requires that these establishments maintain daily records to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and any corrective actions that they take, to ensure that the procedures are effective (9 CFR 310.22).

The Agency is revising the SRM information collection based on the most recent plant data, which support a finding of more total burden hours than there are in the approved information collection.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of .12 hours per response.

Respondents: Official establishments that slaughter cattle or process parts of cattle.

Estimated No. of Respondents: 3,512.

Estimated No. of Annual Responses per Respondent: 300.

Estimated Total Annual Burden on Respondents: 123,216 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627,(202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and,(d) ways to minimize the burden of the collection of information on establishments, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular 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/index.asp.*

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 our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page FSIS is able to provide information to a much broader, 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: June 11, 2007.

David P. Goldman,

Acting Administrator.

[FR Doc. E7–11563 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0014]

Notice of Request for Revision of a Currently Approved Information Collection (Advanced Meat Recovery)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of an approved information collection regarding the regulatory requirements associated with the production of meat from Advanced Meat Recovery systems to reflect its most recent plant data, which support a finding of fewer total burden hours.

DATES: Comments on this notice must be received on or before August 14, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- 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.*
- 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.regulation.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–2007–0014 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document,

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, except Federal holidays. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp.* Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail address, and telephone number—on the Internet may leave the information off their comments.

FOR ADDITIONAL INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Advanced Meat Recovery.

OMB Number: 0583–0130.

Expiration Date of Approval: 10/31/2007.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). The statute provides that FSIS is to protect the public by verifying that meat products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting revision of an approved information collection addressing paperwork and recordkeeping requirements regarding the regulatory requirements associated with the production of meat from Advanced Meat Recovery (AMR) systems. The Agency is revising the AMR information collection based on its most recent plant data, which support a finding of fewer total burden hours than there are in the approved information collection.

FSIS requires that official establishments that produce meat from AMR systems (1) ensure that the bones used for the systems do not contain brain, trigeminal ganglia, or spinal cord and are from animals younger than 30 months of age; (2) test for calcium, iron, spinal cord, and dorsal root ganglia (DRG); (3) document their testing protocols; (4) handle product in a manner that does not cause product to be misbranded or adulterated; and (5) maintain records of their documentation and of their test results (9 CFR 318.24).

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of a half hour per response.

Respondents: Official establishments that produce meat from AMR systems.

Estimated No. of Respondents: 56.

Estimated No. of Annual Responses per Respondent: 900.

Estimated Total Annual Burden on Respondents: 25,209 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and,(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular 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/index.asp.*

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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 June 11, 2007.

David P. Goldman,

Acting Administrator.

[FR Doc. E7–11622 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cibola National Forest; New Mexico; Tajique Watershed Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of an environmental impact statement.

SUMMARY: On August 20, 2004, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Tajique Watershed Restoration Project on the Cibola National Forest, Mountainair Ranger District (69 FR 51626–51628). The Environmental Protection Agency (EPA) published the notice of availability of the Draft EIS in the **Federal Register** on February 4, 2006 (70 FR 6004). The EPA published a notice of availability for the Final EIS in the **Federal Register** on October 21, 2005 (69 FR 61287) and an amended notice of availability of the Final EIS on November 4, 2005 (70 FR 67166). The project had been developed in accordance with Title I of the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148). After the distribution of the Final EIS, the Forest Service received an objection during the pre-decisional administrative review period on the project. There was no resolution to the objection and the Forest Service has

made no decision to implement any alternative analyzed in the document. The Department of Agriculture, Forest Service is issuing this notice to advise the public that we are withdrawing the Tajique Watershed Restoration EIS and will not issue a Record of Decision. The Forest Service plans to reassess the proposal and determine whether or not to propose any activities within the Tajique project area. The NEPA process would be re-initiated for any new proposed actions.

FOR FURTHER INFORMATION CONTACT: Karen Lessard, District Ranger, Mountainair Ranger District, Cibola National Forest, P.O. Box 69, Mountainair, NM 87036-0069, Phone (505) 847-2290, Fax (505) 847-2238.

Dated: May 22, 2007.

Nancy Rose,

Forest Supervisor.

[FR Doc. 07–2975 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Settlement Land Transfers; Pueblo de San Ildefonso and Los Alamos County, Santa Fe National Forest, Los Alamos County/Rio Arriba/Santa Fe County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The US Forest Service (FS) will prepare an environmental impact statement (EIS) on a proposed action that implements certain aspects of the Pueblo de San Ildefonso Claims Settlement Act of 2005 (Pub. L. 109–186). Portions of the Act considered in this analysis include mandated transfer of certain National Forest System lands to the Pueblo de San Ildefonso (about 7,058 acres), the Pueblo of Santa Clara (about 740 acres), and Los Alamos County (about 631 acres). Lands would be conveyed in exchange for an appraised monetary value. The legislation also requires the Forest Service to offer for purchase six parcels of National Forest System lands to Los Alamos County near the community (totaling about 324 acres), and to reconstruct Forest Road (FR) 416v to a high-clearance, Level 2 standard. Although these proposed actions have been mandated by the Act, the Santa Fe National Forest will conduct a National Environmental Policy Act environmental analysis to disclose the impacts of these actions, and to fully describe any discretionary actions that may also be included as part of the land transfers called for in the Act. However, under the Act, discretion is limited. A map of the area is located at the following Forest Service Web site: *http://www.fs.fed.us/r3/sfe/projects/.*

DATES: Comments concerning the project must be received by July 10, 2007. The draft environmental impact statement is expected in September 2007 and the final environmental impact statement is expected in November 2007.

ADDRESSES: Send written comments to Sandy Hurlocker, District Ranger, US Forest Service, Española Ranger District, P.O. Box 3307, Española, New Mexico 87533. Electronic mail (e-mail) may be sent to: *comments-southwestern-santafe-espanola@fs.fed.us* and FAX may be sent to (505) 753–9411.

FOR FURTHER INFORMATION CONTACT: Sandy Hurlocker, District Ranger, Española, Española Ranger District, (505) 753–7331.

SUPPLEMENTARY INFORMATION:

Background: On September 27, 2006, the Pueblo de San Ildefonso Claims Settlement Act of 2005 was signed into law. The purpose of the Act is to resolve title claims asserted against the United States by the San Ildefonso Pueblo under the proceedings of the Indian Claims Act (Docket No. 354). Other purposes of the Act related to this analysis are (1) The authorization of the Pueblo to acquire and the Forest Service to convey National Forest System lands as identified in the San Ildefonso Settlement Agreement (Settlement Area Lands), and (2) the authorization of the Secretary of Agriculture to convey other lands out of the National Forest System in order to comply with an inter-Pueblo agreement and the Los Alamos Agreement, which has been incorporated by the San Ildefonso Settlement Agreement and ratified by the Act. These additional lands include the Water System Lands, the Northern Tier Lands (to be acquired by the Santa Clara Pueblo), and the Los Alamos Townsite Lands.

The Act provides that the Settlement Area Land and the Northern Tier Lands shall be held by the Secretary of the Interior in trust for the benefit of each Pueblo. Lands acquired by Los Alamos County as Water System Lands become San Ildefonso Pueblo tribal lands if they were no longer needed for Los Alamos County's water facilities. Most of the Los Alamos Townsite lands are currently used for Los Alamos County water facilities, including Los Alamos Reservoir and dam, as well as water tanks. Except for the restrictions and reservations identified above, the Secretary of Agriculture does not propose to place any restrictions on future use of the Townsite lands, Settlement Area lands, Water System lands, or Northern Tier lands.

The Act also calls for reservation of a number of road easements to assure public access to lands that would otherwise be inaccessible to motorized vehicles once the conveyance takes place. For most of these reservations, existing roads provide adequate access and so only an administrative action is expected. However, as part of the Los Alamos Agreement, road improvement work must be completed to improve public access to the National Forest System lands adjoining the Settlement Area Lands prior to conveyance. The Act allows for reconstruction of FR 416v to a high clearance, Level 2 to provide this access.

Even though the Act requires these actions and so discretion is limited, the Santa Fe National Forest will study and disclose in an environmental impact statement the effects of the actions described in the Act that relate to the Secretary of Agriculture's authority to transfer lands and reconstruct Road 416v. Other actions to be undertaken by the Department of Interior, the Pueblo de San Ildefonso, or Los Alamos have not been included in the scope of this proposal because they can be accomplished separately. A map of the area is located at the following Forest Service Web site: *http://www.fs.fed.us/r3/sfe/projects/.*

Proposed Action

The Santa Fe National Forest proposes the following:

- Convey the Settlement Area lands to the Pueblo de San Ildefonso (approximately 7,058 acres) located in: Township 20 north, Range 7 east, sections 19, 20, 21, 28, 29, 30, 31, 32, 33; and Township 19 north, Range 7 east, sections 4, 5, 6, 7, 8, 9; New Mexico Principal Meridian.
- Convey the Water System lands to Los Alamos County (approximately 631 acres) located in Township 20 north, Range 7 east, section 31; Township 19 north, Range 7 east, sections 4, 5, 6, 7, 8, 9; Township 19 north, Range 6 east, section 1; New Mexico Principal Meridian.
- Convey the Northern Tier Lands to the Pueblo of Santa Clara (approximately 740 acres) located in Township 20 north, Range 7 east, sections 17, 18; New Mexico Principal Meridian.
- Offer the conveyance the Los Alamos Townsite lands to Los Alamos County. These six parcels total approximately 324 acres of National

Forest System lands located in Township 19 north, Range 4 east, section 13; Township 19 north, Range 5 east, sections 3, 4, 5, 18; New Mexico Principal Meridian.

• Reconstruct FR 416v to a high clearance, Level 2, standard, following the existing route as much as practical. Reconstruction will require grading, culvert placement, and possibly relocation of short segments.

• Ancillary actions that may be implemented along with the land transfers and road reconstruction. Examples include fence construction along boundary lines and road closures where roads no longer serve a purpose to the management of National Forests.

Lead Agency: The USDA Forest Service (FS) is the lead agency.

Responsible Official: The responsible Official is the Forest Supervisor, Santa Fe National Forest 1474 Rodeo Road, P.O. Box 1689, Santa Fe, NM 87504–1689.

Decision Framework: The NEPA decision to be made is limited by the Act. Transfer or offering for sale of lands is mandated. Reconstruction of FR 416v is also mandated as an action that must be completed before the land conveyance can occur. However, the Forest will evaluate effects and develop mitigation measures and best management practices to implement during the road reconstruction and, where applicable, in the land conveyance.

Scoping Process: The scoping process will include public meetings and field reviews as necessary. Appropriate public involvement will occur in May/June 2007 as initial scoping. Appropriate activities will occur once the Draft EIS is available for review, which is expected to occur in the summer of 2007.

Preliminary Issues: Because the conveyance of land will not significantly change the expected land use of the transferred lands, no significant issues have been identified. Reconstruction of FR 416v has the potential to affect known cultural resource sites located within the existing roadway. Because the sites and road occupy land between a canyon wall and steep ground, options to avoid these sites are limited, and so data recovery is the likely method for mitigating impacts. No threatened or endangered species—or Region 3 sensitive species—of animal or plant are known in the project area. Likewise, no Region 3 sensitive species are known. Because the National Forest System lands would be closed to the general public once conveyed to the Pueblos, a change in recreational use patterns is likely. A closed pumice mine exists on the land to be conveyed to the San IIdefonso Pueblo, with reclamation underway. Any unfinished reclamation will pass to the Secretary of Interior pursuant to the Act, Section 7(f).

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. The Forest Service invites written comments and suggestions on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 1, 2007.

Daniel J. Jiron,

Forest Supervisor, Santa Fe National Forest.

[FR Doc. 07–2958 Filed 6–12–07; 1:20 pm]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sequoia National Forest, California; Sequoia National Forest Public Wheeled Motorized Travel Management EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Sequoia National Forest will prepare an environmental impact statement (EIS) to disclose the impacts associated with the following proposed actions:

1. The addition of approximately 71 miles of existing unauthorized routes to the National Forest System (NFS) of motorized trails, open to wheeled motorized vehicle use by the public.

2. The addition of approximately 0.9 miles of existing unauthorized routes to NFS roads, open to all wheeled motorized vehicle use by the public.

3. The change of approximately 21.8 miles of existing NFS roads, currently closed to public wheeled motorized vehicle use, to NFS motorized trails, open to wheeled motorized vehicle use by the public.

4. The change of approximately 8.4 miles of existing NFS roads, currently open to public wheeled motorized vehicle use, to NFS motorized trails, open to all wheeled motorized vehicle use by the public.

5. The change of approximately 23.2 miles of existing NFS roads, currently closed to public wheeled motorized vehicle use, to NFS roads, open to all wheeled motorized vehicle use by the public.

6. The change of approximately 19.5 miles of existing NFS roads, currently open to wheeled motorized vehicle use by the public, to closed NFS roads.

7. The change of approximately 12.4 miles of existing NFS roads, currently open to public use by highway legal vehicles only, to NFS roads, open to all

wheeled motorized vehicle use by the public.

8. The change of approximately 0.5 miles of existing NFS road, currently open to highway legal vehicles only, to NFS motorized trail, open to wheeled motorized vehicle use by the public.

9. The continuation of wheeled motorized vehicle use by the public on the NFS trail north of Dry Meadow and amendment of the Sequoia National Forest Land and Resource Management Plan to change approximately 5,500 acres of semi-primitive non-motorized (SPNM) to semi-primitive motorized (SPM), to conform with motorized vehicle use of the trail.

10. The prohibition of wheeled motorized vehicle travel off of designated NFS roads, NFS trails, and areas by the public, except as allowed by permit or other authorization.

DATES: The comment period on the proposed action will extend 30 days from the date the notice of intent is published in the **Federal Register** Completion of the draft EIS is expected in September 2007, and the final EIS is expected in September 2008.

ADDRESSES: Send written comments to: Chris Sanders, Travel Management, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257. The phone number is (559) 784–1500.

FOR FURTHER INFORMATION CONTACT: Chris Sanders at the address listed above.

SUPPLEMENTARY INFORMATION:

Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. California is experiencing the highest level of OHV use of any state in the nation. There were 786,914 ATVs and OHV motorcycles registered in 2004, up 330% since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5 years. Four-wheel drive vehicle sales in California increased by 1500% to 3,046,866 from 1989 to 2002.

Unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic dependent species are particularly vulnerable to OHV use. Unmanaged recreation, including impacts from OHVs, is one of ''Four Key Threats Facing the Nation's Forests and Grasslands'' (USDA Forest Service, June 2004).

On August 11, 2003, the Pacific Southwest Region of the Forest Service entered into a Memorandum of Intent (MOI) with the California Off-Highway Motor Vehicle Recreation Commission and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation. That MOI set in motion a regionwide effort to ''Designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by 2007.'' On November 9, 2005, the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70. 216—Nov. 9, 2005, pp 68264–68291). This final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forest System (NFS) lands. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule prohibits the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that are not consistent with the designations.

On some NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted in unplanned, unauthorized roads and trails. These routes generally developed without environmental analysis or public involvement and do not have the same status as NFS roads and NFS trails included in the forest transportation system. Nevertheless, some unauthorized routes are well sited, provide excellent opportunities for outdoor recreation by motorized and non-motorized users, and would enhance the National Forest System of designated roads, trails, and areas. Other unauthorized routes are poorly located and cause unacceptable impacts. Only NFS roads and NFS trails can be designated for wheeled motorized vehicle use. In order for an unauthorized route to be designated, it must first be added to the forest transportation system.

The Sequoia National Forest is not proposing changes to the existing designated route systems in the Hume Lake and Tule River Ranger Districts, the portion of the Hot Springs Ranger District within the Giant Sequoia National Monument, or on the Kern Plateau at this time. Wheeled motorized vehicle use in these areas is already restricted to an existing designated system of routes.

In 2004, the Sequoia National Forest completed in inventory of unauthorized routes, as described in the MOI, on NFS lands in the Kern River Ranger District and the Hot Springs Ranger District, outside of the Giant Sequoia National Monument, and identified approximately 582.4 miles of unauthorized routes. The Sequoia then used an interdisciplinary process to conduct travel analysis that included working the public to determine whether any of the unauthorized routes should be proposed for addition to the transportation system. Roads, trails, and areas that are currently part of the Sequoia transportation system and are open to wheeled motorized vehicle travel will remain designated for such use, except as described below under the Proposed Action. This proposal focuses only on the prohibition of wheeled motorized vehicle travel off designated routes and needed changes to the Sequoia transportation system, including the addition of some user-created routes to the Sequoia transportation system and other changes to existing motor vehicle restrictions. The proposed action is being carried forward in accordance with the Travel Management Rule (36 CFR Part 212).

In accordance with the rule, following a decision on this proposal, the Sequoia National Forest will publish a Motor Vehicle Use Map (MVUM), identifying all Sequoia roads, trails, and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

A Mediated Settlement Agreement (MSA) was signed in 1990, which resolved multiple appeals of the 1988 forest plan. Pages 99–101 of the MSA discuss management of the trail north of Dry Meadows. ''If a trail that can accommodate OHV use can be located through the area, the SPNM boundary shall be adjusted accordingly.''

Purpose and Need for Action

The following needs have been identified for this proposal:

1. There is a need for regulation of unmanaged wheeled motorized vehicle travel by the public. Currently, wheeled motorized vehicle travel by the public is not prohibited off designated routes in the Kern River Ranger District and the Hot Springs Ranger District, outside of the Giant Sequoia National Monument (except by forest order). In their enjoyment of the national forest, motorized vehicle users have created numerous unauthorized routes. The number of such routes has continued to grow each year, with many routes having environmental impacts and

safety concerns that have not been addressed. The Travel Management Rule, 36 CFR Part 212, provides policy for ending this trend of unauthorized route proliferation and managing the forest transportation system in a sustainable manner, through designation of motorized NFS roads, trails, and areas, and the prohibition of cross-country travel.

2. There is a need for limited changes and additions to the Sequoia National Forest transportation system to:

2.1. Provide wheeled motorized access to recreation opportunities (camping, hunting, fishing, hiking, horseback riding, etc.).

2.2. Provide a diversity of wheeled motorized recreation opportunities (4 x 4 vehicles, motorcycles, ATVs, passenger vehicles, etc.).

2.3. As obligated by the 1990 Mediated Settlement Agreement (MSA), to the Sequoia National Forest Land and Resource Management Plan to consider whether the trail north of Dry Meadows should continue to be managed for wheeled motorized use (MSA, pages 99–101). Under the Sequoia Land and Resource Management Plan the trail north of Dry Meadows runs through a semi-primitive non-motorized (SPNM) area.

It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the national forest recreation role and land capability [FSM 2353.03(2)].

In meeting these needs the proposed action must also achieve the following purposes:

A. Avoid impacts to cultural resources.

B. Provide for public safety.

C. Provide for a diversity of recreational opportunities.

D. Assure adequate access to public and private lands.

E. Provide for adequate maintenance and administration of designations based on availability of resources and funding to do so.

F. Minimize damage to soil, vegetation, and other forest resources.

G. Avoid harassment of wildlife and significant disruption of wildlife habitat.

H. Minimize conflicts between wheeled motor vehicles and existing or proposed recreational uses of NFS lands.

I. Minimize conflicts among different classes of wheeled motor vehicle uses of NFS lands or neighboring federal lands.

J. Assure compatibility of wheeled motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, etc.

K. Have valid existing rights of use and access (rights-of-way).

Proposed Action

Based on the stated purpose and need for action, and as a result of the recent travel analysis process, the Sequoia proposes the following changes to the current transportation system.

1. The addition of approximately 71 miles of existing unauthorized routes to the National Forest System (NFS) of motorized trails, open to wheeled motorized vehicle use by the public.

2. The addition of approximately 0.9 miles of existing unauthorized routes to NFS roads, open to all wheeled motorized vehicle use by the public.

3. The change of approximately 21.8 miles of existing NFS roads, currently closed to public wheeled motorized vehicle use, to NFS motorized trails, open to wheeled motorized vehicle use by the public.

4. The change or approximately 8.4 miles of existing NFS roads, currently open to public wheeled motorized vehicle use, to NFS motorized trails, open to wheeled motorized vehicle use by the public.

5. The change of approximately 23.2 miles of existing NFS roads, currently closed to public wheeled motorized vehicle use, to NFS roads, open to all wheeled motorized vehicle use by the public.

6. The change of approximately 19.5 miles of existing NFS roads, currently open to wheeled motorized vehicle use by the public, to closed NFS roads.

7. The change of approximately 12.4 miles of existing NFS roads, currently open to public use by highway legal vehicles only, to NFS roads, open to all wheeled motorized vehicle use by the public.

8. The change of approximately 0.5 mile of existing NFS road, currently open to highway legal vehicles, to NFS motorized trail, open to wheeled motorized vehicle use by the public.

9. The continuation of wheeled motorized vehicle use by the public on the NFS trail north of Dry Meadow and amendment of the Sequoia National Forest Land and Resource Management Plan to change approximately 5,500 acres of semi-primitive non-motorized (SPNM) to semi-primitive motorized (SPM), to conform with motorized vehicle use of the trail.

10. The prohibition of wheeled motorized vehicle travel off of designated NFS roads, NFS trails, and areas by the public, except as allowed by permit or other authorization.

Maps and tables describing in detail both the existing Sequoia National Forest transportation system and the proposed action can be found at *http://www.fs.fed.us/r5/sequoia/*. In addition, maps will be available for viewing at: Supervisor's Office, 1839 South Newcomb Street, Porterville, CA 93757; Kern River Ranger District, 105 Whitney Road, Kernville, CA 93238.

Responsible Official

The Responsible Official is Tina J. Terrell, Forest Supervisor, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to the existing Sequoia National Forest transportation system, amend the Forest Plan, or prohibit cross-country wheeled motorized vehicle travel by the public off the designated system. Once the decision is made, the Sequoia National Forest will publish a Motor Vehicle Use Map (MVUM), identifying the roads, trails, and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations interested in or affected by the proposed action.

The Notice of Intent is expected to be published in the **Federal Register** on June 15, 2007. The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 2007. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Sequoia National Forest participate at that time.

The final EIS is scheduled to be completed in September 2008. In the

final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision. Substantive comments are defined as ''comments within the scope of the proposed action, specific to the proposed action, and have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider'' (36 CFR 215.2). Submission of substantive comments is a prerequisite for eligibility to appeal under the 36 CFR part 215 regulations.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 1, 2007.

Tina J. Terrell,

Forest Supervisor, Sequoia National Forest.

[FR Doc. 07–2841 Filed 6–14–07; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received On or Before: July 15, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Ballpoint Pen, Stick
NSN: 7520–00–NIB–1793—Round Stick Pen ''Alpha Basic'' Red
NSN: 7520–00–NIB–1794—Antimicrobal Round Stick Pen ''Alpha Basic'' Black
NSN: 7520–00–NIB–1795—Antimicrobal Round Stick Pen ''Alpha Basic'' Blue
NSN: 7520–00–NIB–1796—Round Stick Pen ''Alpha Basic'' Black w/ Grip
NSN: 7520–00–NIB–1797—Round Stick Pen ''Alpha Basic'' Blue w/ Grip
NSN: 7520–00–NIB–1798—Round Stick Pen ''Alpha Basic'' Red w/ Grip
NPA: Alphapointe Association for the Blind, Kansas City, MO
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY
Coverage: A-List—for the total Government requirement as aggregated by the General Services Administration

Glow Plug
NSN: 2920–01–456–6985
NPA: Shares Inc., Shelbyville, IN
Contracting Activity: Defense Supply Center Columbus, Columbus, OH
Coverage: C-List for the requirements of the Defense Supply Center Columbus, Columbus, OH
Inkjet Printer Cartridge
NSN: 7510–00–NIB–0780—compatible with Canon Part No. BCI–3ePC/6PC. Cyan
NSN: 7510–00–NIB–0781—compatible with Canon Part No. BCI–3ePM/6PM Magenta
NSN: 7510–00–NIB–0782—compatible with Canon Part No. BCI–15BK. Black
NSN: 7510–00–NIB–0783—compatible with Canon Part No. BCI–21/24CL. Tri-color
NSN: 7510–00–NIB–0784—compatible with Epson Part No. T018201. Tri-color
NSN: 7510–00–NIB–0785—compatible with Epson Part No. T029201. Tri color
NSN: 7510–00–NIB–0786—compatible with Epson Part No. T041020. Tri-color.
NSN: 7510–00–NIB–0787—compatible with Epson Part No. T044120. Black
NSN: 7510–00–NIB–0788—compatible with Epson Part No. T044220. Cyan
NSN: 7510–00–NIB–0789—compatible with Epson Part No. T044320. Magenta
NSN: 7510–00–NIB–0790—compatible with Epson Part No. T044420. Yellow
NSN: 7510–00–NIB–0791—compatible with Epson Part No. T048120. Black
NSN: 7510–00–NIB–0792—compatible with Epson Part No. T048220. Cyan
NSN: 7510–00–NIB–0793—compatible with Epson Part No. T048320. magenta
NSN: 7510–00–NIB–0794—compatible with Epson Part No. T048420. yellow
NSN: 7510–00–NIB–0795—compatible with Epson Part No. T048520. Light Cyan
NSN: 7510–00–NIB–0796—compatible with Epson Part No. T048620. Light Magenta
NPA: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY
Coverage: A-List—for the total Government requirement as aggregated by the General Services Administration
Maintenance Record Holder
NSN: 8105–00–190–9824—Maintenance Record Holder
NPA: Bestwork Industries for the Blind, Inc., Runnemede, NJ
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY
Coverage: B-List—for the broad Government requirement as specified by the General Services Administration
Dry Erase Starter Kit
NSN: 7520–00–NIB–1158—Dry Erase Starter Kit
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY
Coverage: A-List—for the total Government requirement as aggregated by the General Services Administration
Spices
NSN: 8950–00–NSH–0080—Chili Powder 10 lb.
NSN: 8950–00–NSH–0081—Cinnamon, Ground 10 lb.
NSN: 8950–00–NSH–0082—Garlic Powder 10 lb.
NSN: 8950–00–NSH–0083—Paprika 10 lb.
NSN: 8950–00–NSH–0084—Pepper, Black, Ground 10 lb.
NPA: Continuing Developmental Services, Inc., Fairport, NY
Contracting Activity: Federal Correctional Institution, Bureau of Prisons, Elkton, OH
Coverage: C-List—for the requirements of the Federal Correctional Institution, Bureau of Prisons, Elkton, OH
Street Broom
NSN: 7920–00–NIB–0461
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: General Service Administration, Southwest Supply Center, Fort Worth, TX
Coverage: B-List—for the broad Government requirement as specified by the General Services Administration

Services

Service Type/Location: Custodial Services, David W. Dyer Federal Building & Courthouse, 300 NE First Ave, Miami, FL. U.S. Courthouse, 301 North Miami Ave, Miami, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: General Services Administration, Public Building Service, Atlanta, GA
Service Type/Location: Document Destruction, Internal Revenue Service, 208 Sunset Drive, Johnson City, TN.
NPA: Goodwill Industries-Knoxville, Inc., Knoxville, TN
Contracting Activity: U.S. Department of Treasury, Internal Revenue Service, Chamblee, GA
Service Type/Location: Grounds Maintenance, San Juan Customhouse, #1 La Puntilla Street, San Juan, PR.
NPA: The Corporate Source, Inc., New York, NY
Contracting Activity: Department of Homeland Security, U.S. Customs and Border Protection, Indianapolis, IN

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–11568 Filed 6–14–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* July 15, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION: On April 20, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 19878) of proposed additions to the Procurement List.

Comments were received from two cap manufacturers who are not current contractors for the cap requirement (Cap, Utility, Camouflage Pattern, Air Force (ABU)) which was proposed for addition to the Procurement List. Both manufacturers objected to the statement in the Regulatory Flexibility Act Certification contained in the Committee's notice of proposed addition to the Procurement List that the proposed addition ''will not have a significant impact on a substantial number of small entities.'' These two companies claimed that developments in the military headwear industry, including additions to the Procurement List, had severely reduced their opportunities in the industry, as well as reducing the number of small entities participating in the industry from five to two.

''Small entities'' as defined by the Regulatory Flexibility Act at 5 U.S.C. 601(6) include small nonprofit agencies as well as small businesses. There are at least five nonprofit agencies participating in the Committee's program which are currently producing military headwear. Even if seven small entities could be considered a substantial number, the positive impact on five of them should balance the negative impact noted by the two manufacturers. Consequently, the

Committee stands by its statement in the Regulatory Flexibility Act certification questioned by the two manufacturers.

This addition to the Procurement List merely raises the Committee's share of the cap in question from 25 percent of the Government requirement to 50 percent. It does not foreclose bidding by the two manufacturers on the remaining 50 percent of the requirement. In light of the fact that the Committee is only required to assess impact on the current contractors for a product being considered for addition to the Procurement List, the limitation of the Committee's share of the cap requirement shows that the Committee is sensitive to the industry impact concerns raised by the two manufacturers.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Cap, Utility, Camouflage Pattern, Air Force (ABU)
NSN: 8415–01–536–4140—Size 6½
NSN: 8415–01–536–4144—Size 6⅜
NSN: 8415–01–536–4148—Size 6⅝
NSN: 8415–01–536–4152—Size 6¾
NSN: 8415–01–536–4181—Size 6⅞
NSN: 8415–01–536–4183—Size 7
NSN: 8415–01–536–4185—Size 7⅛
NSN: 8415–01–536–4212—Size 7¼
NSN: 8415–01–536–4218—Size 7⅜
NSN: 8415–01–536–4221—Size 7½
NSN: 8415–01–536–4223—Size 7⅝
NSN: 8415–01–536–4226—Size 7¾
NSN: 8415–01–536–4229—Size 7⅞
NSN: 8415–01–536–4233—Size 8
NSN: 8415–01–536–4236—Size 8⅛
NSN: 8415–01–536–4240—Size 8¼
NSN: 8415–01–536–4245—Size 8⅜
NSN: 8415–01–536–4248—Size 8½
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA
Coverage: C-List—The requirement being proposed to the Procurement List is an additional 25% of the Defense Supply Center Philadelphia, Philadelphia, PA requirement.

Clamp, Loop

NSN: 5340–01–527–6885
NPA: Provail, Seattle, WA
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA
Coverage: C-List—for the requirements of the Defense Supply Center Philadelphia, Philadelphia, PA

Latex Disposable Gloves

NSN: M.R. 553

Nitrile Disposable Gloves

NSN: M.R. 552
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: Defense Commissary Agency, Fort Lee, VA
Coverage: C-List—for the requirements of the Defense Commissary Agency, Fort Lee, VA

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–11569 Filed 6–14–07; 8:45 am]

BILLING CODE 6353–01–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 emergency provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Local Update of Census Addresses (LUCA) Program.

Form Number(s):

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–1673—Closeout Letter
D–1673 (PR) (S)—Closeout Letter
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)—Address Count List—Puerto Rico (Spanish)

Agency Approval Number: 0607–0795.

Type of Request: Emergency submission.

Burden: 3,909,829 hours.

Number of Respondents: 19,780.

Average Hours per Response: 198.

Needs and Uses: The 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. 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.

The information to be collected in the LUCA Program is essential to the mission of the Census Bureau and will directly contribute to the successful outcome of Census 2010. 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. Because tribal, state, and local governments have current knowledge of and data about where housing growth and change are occurring in their jurisdictions, their input into the overall development of the address list for the census makes a vital contribution.

The Census Bureau requests expedited OMB approval of the LUCA Program by July 15, 2007.

Affected Public: State, local and Tribal governments.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 16.

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 by July 15, 2007 to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: June 12, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11601 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–428–830

Stainless Steel Bar from Germany: Notice of Correction of Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0133 or (202) 482–0182, respectively.

Correction:

On March 19, 2007, the Department of Commerce (''the Department'') published the preliminary results of the new shipper review for stainless steel bar from Germany. *See Stainless Steel Bar from Germany: Preliminary Results of New Shipper Review*, 72 FR 12765 (March 19, 2007) (''*Preliminary Results*''). Subsequent to publication of the *Preliminary Results*, we identified an inadvertent error in the number of days specified for the issuance of the final results of this new shipper review.

On page 12767, in the first column, under the heading ''Preliminary Results of Review,'' on the 36th line, the following sentence should read, ''The Department will issue final results of this new shipper review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.''

Conclusion

This notice serves solely to correct the number of days specified for the issuance of the final results of this new shipper review as it was listed in the *Preliminary Results* (90 to 120 days). The Department's findings in the *Preliminary Results* remain unchanged. This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: June 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–11583 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–427–820)

Stainless Steel Bar from France: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2007, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on stainless steel bar from France for the period March 1, 2006, through February 28, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 9505 (March 2, 2007). On March 30, 2007, Ugitech S.A. (Ugitech) requested an administrative review of its U.S. sales that were subject to the antidumping duty order on stainless steel bar from France for this period. On April 2, 2007, Ascometal S.A. (Ascometal) requested an administrative review of its U.S. sales that were subject to the antidumping duty order on stainless steel bar from France for this period. On April 27, 2007, the Department published a notice of initiation of an administrative review of

the antidumping duty order on stainless steel bar from France with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007).

Partial Rescission of Review

On May 24, 2007, Ugitech timely withdrew its request for an administrative review of its sales during the above–referenced period. Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review. Because Ugitech has withdrawn its request for review within the 90-day period and no other party requested a review of Ugitech, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Ugitech.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries during the period March 1, 2006, through February 28, 2007.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–11609 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–909, A–520–802

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Certain Steel Nails from the People's Republic of China and the United Arab Emirates

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey (People's Republic of China) or David Goldberger (United Arab Emirates), AD/CVD Operations, Offices 2 and 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petitions

On May 29, 2007, the Department of Commerce (Department) received antidumping duty petitions (petitions) filed by Mid Continent Nail Corporation, Davis Wire Corporation, Gerdau Ameristeel Corporation (Atlas Steel & Wire Division), Maze Nails (Division of W.H. Maze Company), and Treasure Coast Fasteners, Inc. (collectively, the petitioners) on behalf of the domestic industry producing certain steel nails.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), requires that a petition be filed by or on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

Extension of Time

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, inter alia, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) of the Act provides that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which the Department must ''poll or otherwise determine support for the petition by the industry.'' Because it is not clear from the petition whether the industry support criteria have been met, the Department has determined to extend the time for initiating an investigation in order to poll the domestic industry. On June 1, 2007, the Department began issuing polling questionnaires to all known domestic producers of certain steel nails identified in the petition. The questionnaires are on file in the Central Records Unit in room B–099 of the main Department of Commerce building. The Department requested that each company complete the polling questionnaire and fax their responses to the Department.

The Department will need additional time to analyze the domestic producers' responses to this request for information. Therefore, it is necessary to extend the deadline determining the adequacy of the petition for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination will now be due no later than July 9, 2007.

International Trade Commission Notification

The Department will contact the International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: June 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–11591 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S.

Department of Commerce. Applications may be examined between 8:30 A.M. and 5:00 P.M. in room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

Docket Number: 07–025. Applicant: University of Minnesota, Institute of Technology Characterization Facility, 12 Shepherd Labs, 100 Union Street SE, Minneapolis, MN 55455. Instrument: Confocal Raman Microscope. Manufacturer: Witec, Germany. Intended Use: The instrument is intended to be used in a centralized facility for a wide variety of research applications including: identifying phases of materials from the interior of the earth and other planetary bodies produced in high pressure/temperature experiments, identifying active pharmaceutical ingredients and various excipients and adjuvants in the dosage form, distinguishing polymorphs in organic crystalline films, identifying components in polymer blends at the micron level, distinguishing components in complex biofilms, characterizing the surface composition of coated aerosol particles, etc. Precise mapping control through a piezo scan table, as well as high resolution and adaptation to different wavelengths of the laser are essential features. Application accepted by Commissioner of Customs: April 23, 2007.

Docket Number: 07–034. Applicant: Purdue University, 915 W State Street, West Lafayette, IN 47907–2054. Instrument: Electron Microscope, Model Titan KRIOS System. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used primarily on studies of alphaviruses and flaviviruses. Topics of investigation include: virus–receptor complexes, structure of naked viruses, structure of lipid enveloped viruses, virus–antibody complexes, assembly pathways and imaging techniques. Application accepted by Commissioner of Customs: May 17, 2007.

Docket Number: 07–035. Applicant: Old Dominion University, 231 Kaufman Hall, Norfolk, VA 23529. Instrument: Mass Spectrometer, Model JEM–2100F. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used to study the microstructure of materials prepared in the form of thin films. The microstructure features include defect density, precipitates, defect distribution, phase and phase distribution. It will also be used to image biological materials to identify cell and membrane properties and to study nanoparticle properties, their interactions, and their morphology. Application accepted by Commissioner of Customs: June 5, 2007.

Dated: June 11, 2007.

Faye Robinson,

Director Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–11608 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coast Pilot Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

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 August 14, 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 and instructions should be directed to: Thomas W. Jackson at 301–713–2750, ext. 167, or at *Thomas.Jackson@noaa.gov*. *mailto:patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA publishes the U.S. Coast Pilot, a series of nine books which supplement the suite of nautical charts published by NOAA. The U.S. Coast Pilot contains information essential to navigators plying U.S. coastal and intracoastal waters which cannot be readily displayed upon the charts. The Coast Pilot Report is offered to the public as a means of facilitating suggested changes to the text made by the public.

II. Method of Collection

A paper form is used.

III. Data

OMB Number: 0648–0007.

Form Number: NOAA Form 77–6.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Response: 30 minutes.

Estimated Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: $0.

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 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: June 12, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11604 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for the Ocean Salmon Fishery Off the Coasts of Washington, Oregon, and California

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

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 August 14, 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 and instructions should be directed to Sarah McAvinchey, (206) 526–4323 or *Sarah.McAvinchey@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements if the appropriate notifications are made to provide the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

II. Method of Collection

Notifications are made by at-sea radio or cellular phone transmissions.

III. Data

OMB Number: 0648–0433.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 40.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 10.
Estimated Total Annual Cost to Public: $0.

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: June 12, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11605 Filed 6–14–07; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Order Exempting the Trading and Clearing of Certain Credit Default Products Pursuant to the Exemptive Authority in Section 4(c) of the Commodity Exchange Act (''CEA''); Republication

Editorial Note: FR Doc. 07–2878 originally published at pages 32079–32081 in the issue of Monday, June 11, 2007. Due to numerous errors, the document is being reprinted in its entirety.

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On May 14, 2007, the Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') published for public comment in the **Federal Register** [1] a proposal to exempt from the CEA [2] the trading and clearing of certain products called credit default options (''CDOs'') and credit default basket options (''CDBOs'') that are proposed to be traded on the Chicago Board Options Exchange (''CBOE''), a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 (''1934 Act''),[3] and cleared through the Options Clearing Corporation (''OCC''), a registered securities clearing agency registered under Section 17A of the 1934 Act,[4] and Derivatives Clearing Organization registered under Section 5b of the CEA.[5] The proposed order was preceded by a request from OCC to approve rules that would permit it to clear these CDOs and CDBOs in its capacity as a registered securities clearing agency. OCC's request presented novel and complex issues of jurisdiction and the Commission determined that an order exempting the trading and clearing of such instruments from pertinent requirements of the CEA may be appropriate. The Commission has reviewed the comments made in response to its proposal and the entire record in this matter and has determined to issue an order exempting the trading and clearing of these contracts from the CEA.

Authority for this exemption is found in Section 4(c) of the CEA.[6]

DATES: *Effective Date:* June 5, 2007.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202–418–5480; *jlawton@cftc.gov,* Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov* or Lois J. Gregory, Special Counsel, 816–960–7719, *lgregory@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC is both a Derivatives Clearing Organization (''DCO'') registered pursuant to Section 5b of the CEA,[7] and a securities clearing agency registered pursuant to Section 17A of the 1934 Act.[8] The CBOE is a national securities exchange registered as such under Section 6 of the 1934 Act.[9]

CBOE has filed with the Securities and Exchange Commission (''SEC'') proposed rule changes to provide for the listing and trading on CBOE of cash-settled products characterized by CBOE as options based on credit events in one or more debt securities of specified ''Reference Entities.'' [10] These products are referred to as Credit Default Options (''CDOs''), and would pay the holder a specified amount upon the occurrence,

[1] 72 FR 27091 (May 14, 2007).
[2] 7 U.S.C. 1 *et seq.*
[3] 15 U.S.C. 78f.
[4] 15 U.S.C. 78q–1.
[5] 7 U.S.C. 7a–1.
[6] 7 U.S.C. 6(c).
[7] 7 U.S.C. 7a–1.
[8] 15 U.S.C. 78q–1.
[9] 15 U.S.C. 78f.
[10] See Release No. 34–55251, 72 FR 7091 (Feb. 14, 2007).

as determined by CBOE, of a ''Credit Event,'' defined to mean an ''Event of Default'' on any debt security issued or guaranteed by a specified ''Reference Entity.''

CBOE has also filed with the SEC proposed rule changes to provide for the listing and trading on CBOE of products called Credit Default Basket Options (''CDBOs'').[11] These are similar in concept to CDOs, except that a CDBO covers more than one Reference Entity. For each individual Reference Entity, a notional value (a fraction of the aggregate Notional Face Value of the basket) and a recovery rate is specified. CDBOs may be of the multiple-payout variety, or of the single-payout variety, where a payout occurs only the first time a Credit Event is confirmed with respect to a Reference Entity prior to expiration.

OCC has filed with the CFTC, pursuant to Section 5c(c) of the CEA and Commission Regulations 39.4(a) and 40.5 thereunder,[12] requests for approval of rules and rule amendments that would enable OCC to clear and settle these CDOs and CDBOs in its capacity as a registered securities clearing agency (and not in its capacity as a DCO).[13] Section 5c(c)(3) provides that the CFTC must approve any such rules and rule amendments submitted for approval unless it finds that the rules or rule amendments would violate the CEA.

The request for approval concerning the CDO product was filed effective March 8, 2007. On April 23, 2007, the review period was extended pursuant to Regulation 40.5(c) until June 6, 2007, on the ground that the CDOs ''raise novel or complex issues, including the nature of the contract, that require additional time for review.'' The request for approval concerning the CDBO product was filed effective April 23, 2007.

II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest. The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. In enacting Section 4(c), Congress noted that the goal of provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [14] As noted in the proposing release,[15] in granting an exemption, the CFTC need not find that the CDOs and CDBOs are (or are not) subject to the CEA.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.

In the May 14, 2007 **Federal Register** release, the Commission requested public comment on the matters discussed above and all issues raised by its proposed exemptive order.

III. Comment Letters

The Commission received four comment letters. The Chicago Mercantile Exchange (''CME'') stated that it ''applauds'' the Commission's proposal to promote innovation but that it believed some issues should be addressed before a final order is issued. CME argued that: (1) It would be unfair for OCC and CBOE to receive exemptive relief yet continue to oppose CME's efforts to list competitive products; (2) the Commission should not accept OCC's and CBOE's characterization of the products as options; (3) there are strong arguments that the products are based on commodities, not securities; and (4) it is not proper to define ''appropriate persons'' in terms of the status of the person's intermediary.

OCC focused on the ''appropriate persons'' issue. OCC argued that in light of the customer suitability rules and the overall federal securities regulatory framework, the products would be limited to ''appropriate persons.''

The CBOE stated that, though it believes CDOs and CDBOs to be securities subject to the securities laws, it has no objection to the Commission issuing a Section 4(c) exemptive order without reaching the issue of whether CDOs and CDBOs are (or are not) subject to the CEA.

The Chicago Board of Trade (''CBOT'') suggested that characterizing the CDOs and CDBOs as ''novel instruments'' should be repudiated or clarified because it could have implications under the patent laws.

IV. Findings and Conclusions

After considering the complete record in this matter, including the comments received, the Commission has determined that the requirements of Section 4(c) have been met.[16] First, the exemption is consistent with the public interest and with the purposes of the CEA. The purposes of the CEA include ''promot[ing] responsible innovation and fair competition among boards of trade, *other markets* and market participants.'' [17] With respect to the competitive issue raised by CME in its comment letter, the Commission believes that an exemptive order in response to OCC's request for rule approval is the best way to promote responsible innovation and fair competition among futures markets and securities markets. In cases such as this one where innovative products come close to the jurisdictional line between commodities and securities, rather than attempting to draw that line with precision with regard to the CBOE products and thereby potentially imposing litigation costs on both the private sector and the public sector, it may be more efficient and is a proper use of Section 4(c) exemptive authority to permit, without compromising the public interest, the products to trade on both sides of the line and let competitive forces determine which venue is successful.

Second, the CDOs and CDBOs would be entered into solely between appropriate persons. This issue was discussed by both CME and OCC in their respective comment letters. Section 4(c)(3) includes within the term ''appropriate persons'' a number of specified categories of persons, but also in subparagraph (K), ''such other

[11] See *SR–CBOE–2007–026*.

[12] 7 U.S.C. 7a–2(c), 17 CFR 39.4(a), 40.5.

[13] See SR–OCC–2007–01 A–1; SR–OCC–2007–06. OCC has filed identical proposed rule changes with the SEC.

[14] HOUSE CONF. REPORT NO. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (''4(c) Conf. Report'').

[15] 72 FR 27091 (May 14, 2007).

[16] In this regard, consistent with the legislative history to Section 4(c) of the CEA, the Commission is not making a finding that CDOs and CDBOs are (or are not) subject to the CEA.

[17] CEA Section 3(b), 7 U.S.C. 5(b) (emphasis added). See also CEA Section 4(c)(1), 7 U.S.C. 6(c)(1) (purpose of exemptions is ''to promote responsible economic or financial innovation and fair competition.'')

persons that the Commission determines to be appropriate in light of * * * *the applicability of appropriate regulatory protections.*'' (Emphasis added.) These products will be traded on a regulated exchange. CBOE, OCC, and their members who will intermediate these transactions, are subject to extensive and detailed oversight by the SEC and, in the case of the intermediaries, the securities self-regulatory organizations. It should be noted that CME has listed or will list comparable products and has not limited access to its markets to specified categories of persons. In light of where the products will be traded, the regulatory protections available under the securities laws, and the goal of promoting fair competition, these products will be traded by appropriate persons.

Third, the exemption would not have a material adverse effect on the ability of the Commission or any designated contract market to carry out their regulatory responsibilities under the CEA. There is no reason to believe that granting an exemption here would interfere with the Commission's or a designated contract market's ability to oversee the trading of similar products on a designated contract market or otherwise to carry out their duties. None of the comment letters received addressed this issue.[18]

Therefore, upon due consideration, pursuant to its authority under Section 4(c) of the CEA, the Commission hereby issues this Order and exempts the trading and clearing of CDOs and CDBOs to be listed and traded on CBOE and cleared through OCC as a securities clearing agency from the CEA. This Order is contingent upon the approval by the SEC, pursuant to Section 19(b) of the 1934 Act, of CBOE and OCC rules to permit the listing and trading of CDOs and CDBOs on CBOE. This Order is subject to termination or revision, on a prospective basis, if the Commission determines upon further information that this exemption is not consistent with the public interest. If the Commission believes such exemption becomes detrimental to the public interest, the Commission may revoke this Order on its own motion.

[18] Under Section 4(c) of the CEA, the Commission need not resolve whether, as CME argues in its comment letter, these products are based on commodities and not securities, or, as CBOE argues in its comment letter, these products are securities subject to the securities laws. Nor need the Commission determine, as CME urges, whether the products are properly characterized as options. Finally, the Commission notes that its references to the novelty of the issues raised by these products refer to issues under the CEA and were not intended to be applicable in any matter relating to patent or intellectual property law.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[19] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The exemptive order would not require a new collection of information from any entities that would be subject to the order.

B. Cost-Benefit Analysis

Section 15(a) of the CEA, as amended by Section 119 of the Commodity Futures Modernization Act of 2000 (''CFMA''),[20] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The exemptive order issued today is expected to facilitate market competition. The Commission has considered the costs and benefits of the order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* Protections for market participants and the public exist in that CBOE, OCC and their members who will intermediate CDOs and CDBOs are subject to extensive oversight by the SEC and, in the case of intermediaries, securities self-regulatory organizations.

2. *Efficiency, competition, and financial integrity.* The exemptive order may enhance market efficiency and competition since it could encourage potential trading of CDOs and CDBOs on markets other than designated contract markets. Financial integrity will not be impaired since the CDOs and CDBOs will be cleared by OCC, a DCO and SEC-registered clearing agency, and intermediated by SEC-registered broker-dealers.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* OCC has described appropriate risk management practices that it will follow in connection with the clearing of CDOs and CDBOs.

5. *Other public interest considerations.* The exemptive order may encourage development of credit derivative products through market competition without unnecessary regulatory burden.

The Commission requested comment on its application of these factors in the proposing release. No comments were received.

After considering these factors, the Commission has determined to issue this Order.

* * * * *

Issued in Washington, DC, on June 5, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2878 Filed 6–8–07; 8:45 am]

Editorial Note: FR Doc. 07–2878 originally published at pages 32079–32081 in the issue of Monday, June 11, 2007. Due to numerous errors, the document is being reprinted in its entirety.

[FR Doc. R7–2878 Filed 6–14–07; 8:45 am]

BILLING CODE 1505–01–D

[19] 44 U.S.C. 3507(d).

[20] 7 U.S.C. 19(a).

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD 2007–OS–0062–]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed extension of a

public information collection and seeks public comment on the provisions thereof. Comments are invited on : (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 14, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Military Pay, Standards and Compliance, Defense Finance and Accounting Service, DFAS-JJFMB/CL, ATTN: Ms. Laurie Eldridge, 1240 East 9th Street, Room 1781, Cleveland, Ohio 44199, or call Ms. Laurie Eldridge at (216) 204–3631.

Title, Associated Form, and OMB Number: Dependency Statements; Parent (DD Form 137–3), Child Born Out of Wedlock (DD Form 137–4), Incapacitated Child Over Age 21 (DD Form 137–5), Full Time Student 21–22 Years of Age (DD Form 137–6), and Ward of the Court (DD Form 137–7); OMB Number 0730–0014.

Needs and Uses: This information collection is used to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or Uniformed Services Identification and Privilege Card. Information regarding a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court is provided by the military member or by another individual who may be a member of the public. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed dependent's monthly expenses. DoD Financial Management Regulation 7000.14–R, Vol. 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or households.

Annual Burden Hours: 24,300 hours.

Number of Respondents: 19,440.

Responses per Respondent: 1.

Average Burden per Response: 1.25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When military members apply for benefits, they must complete the form which corresponds to the particular dependent situation (a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court). While members usually complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. The requirement to complete these forms helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: June 5, 2007

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2951 Filed 06–14–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Over-the-Counter Drug Demonstration Project

AGENCY: Department of Defense.

ACTION: Notice of a TRICARE over-the-counter drug demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the Department of Defense will evaluate allowing selected over-the-counter (OTC) drugs to be included on the TRICARE uniform formulary. The Secretary will evaluate the costs/benefits and beneficiary satisfaction of providing OTC drugs under the pharmacy benefits program when the selected OTC drugs are determined to be clinically effective. The demonstration project will be available for beneficiaries within the United States, Puerto Rico, Virgin Islands, and Guam.

DATES: *Effective Date:* This demonstration project is mandated by Section 705 of the John Warner National Defense Authorization Act for 2007, with an implementation deadline of May 1, 2007. Therefore, the Department of Defense is waiving the regulation (32 CFR 199.1(o)) requiring at least 30 days notice of a demonstration project prior to its effective date. Waiver of the notice period is deemed necessary to avoid delay in implementing program changes.

FOR FURTHER INFORMATION CONTACT: MAJ Travis Watson, TRICARE Management Activity, Pharmaceutical Operations Directorate, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

Section 705 of the John Warner National Defense Authorization Act for 2007 (hereafter Section 705) directed the Department of Defense to conduct a demonstration project to allow certain over-the-counter medications to be included on the uniform formulary under section 1074g of title 10, United States Code. Section 705 requires that OTC drugs provided under this demonstration project be made available through at least two of the following dispensing venues—military treatment facilities, TRICARE retail network pharmacies, or the TRICARE mail order pharmacy. The Department intends to initially offer the selected OTC drugs through the TRICARE mail order pharmacy and a limited number of designated military treatment facilities (no less than five per TRICARE region). Not all OTC drugs will be covered under this demonstration project. An OTC drug shall be made available to a beneficiary through the demonstration project if (a) the beneficiary has a prescription for a drug requiring a prescription; (b) the Pharmacy & Therapeutics Committee has determined

the OTC drug to be cost-effective and therapeutically equivalent to the prescription drug; and (c) the OTC drug has been included on the uniform formulary.

Current law excludes cost sharing of OTC drugs (except insulin) under the Pharmacy Benefits Program. Section 705 requires the demonstration project to evaluate the clinical and cost effectiveness of OTC drugs as well as beneficiary satisfaction with the project. At the conclusion of not more than two years of the project, the Secretary will evaluate the hypotheses that substitution of selected OTC drugs under the TRICARE Pharmacy Benefits Program provides clinical and cost effectiveness along with beneficiary satisfaction, and submit a report to the Armed Services Committee of both the House and Senate that includes conclusions and recommendations for improving the provision of OTC drugs under the pharmacy benefits program and whether permanent legislative authority should be provided to cover OTC drugs under the pharmacy benefits program. Section 705 also authorizes the Department to continue the demonstration for up to one year after submitting the report if it is recommended that the Department should be granted permanent authority to provide OTCs.

B. Description of Demonstration Project

(1) Inclusion of certain over-the-counter drugs. The Department of Defense Pharmacy & Therapeutics (P&T) Committee must find that the OTC drug is cost-effective and therapeutically equivalent to a prescription drug within a selected therapeutic class. The P&T Committee will expeditiously begin relative clinical and cost-effective evaluations of OTC drugs in therapeutic classes that would meet the intent of this requirement. The P&T Committee will review OTC drugs throughout the course of the demonstration project. Some potential candidates include omeprazole, an anti-ulcer/heartburn agent; loratidine, a non-sedating antihistamine; topical antifungals; and niacin, a cholesterol lowering agent. The minutes of the DoD Pharmacy & Therapeutics Committee (*http://www.tricare.mil/pharmacy/PT_Cmte/default.htm*) will record the selection of OTC drugs which are part of this demonstration project.

(2) OTC drug availability through the demonstration project. There are two categories of beneficiaries who are eligible candidates for the demonstration: (1) Those who have a current prescription filled for a drug in the therapeutic class; and (2) those who have a new prescription for a prescription item that has an approved OTC drug equivalent, as defined by the program. For beneficiaries who have a currently filled prescription, the Pharmacy Data Transaction Service (PDTS) will be used to review a patient's medication history to verify whether they have received a therapeutically equivalent prescription drug that corresponds to the OTC drug covered under the demonstration project. For beneficiaries who have a new prescription, the process used to verify eligibility will depend upon the dispensing venue the beneficiary chooses to use. Not all OTC drugs eligible for dispensing through this project will be available at all dispensing venues. The Pharmacy Program Office will communicate OTC drug availability through the use of the TRICARE Web site (*http://www.tricare.mil/pharmacy*), public affairs outreach, and through the representative military beneficiary organizations.

(3) Dispensing venues and project scope. This demonstration project is required to be conducted through at least two of the three points of service for dispensing prescriptions. Standard utilization management processes will be applied to the demonstration project consistent with current practices at TMOP, military treatment facilities, and the TRICARE Retail Pharmacy network.

i. TRICARE Mail Order Pharmacy. The demonstration project will be initiated in the TRICARE mail order pharmacy. When a beneficiary receives a prescription product from TMOP, which has an OTC drug available for dispensing under this demonstration, the beneficiary will have their prescription filled, and additionally, they will receive a letter informing them about the demonstration and how to participate. The letter will consist of demonstration information and a pre-printed prescription for the OTC drug. In order to participate in the demonstration, the beneficiary must take the pre-printed prescription to their provider for signature. The beneficiary can send the signed, pre-printed prescription or a new prescription from the provider to TMOP for filling in place of the legend prescription. A provider's signature is required on either. Providers may send a prescription to the TMOP via facsimile or mail. When the prescription for the OTC is received by TMOP, all remaining refills (if any) will be filled with the OTC instead of the original prescription drug. The contractor shall accept either the signed pre-printed prescription or a new prescription from the provider.

ii. Military treatment facilities. The Pharmacy Program Office in conjunction with the DoD P&T Committee will search for opportunities to find cost-effective OTC drugs that meet the intent of the program design. Many therapeutic drugs in drug classes with an equivalent OTC are more costly than the generic drug that can be obtained by the MTF with federal pricing. The number of military treatment facilities that will participate in the demonstration project will be consistent in scope with the requirements in Section 705, which allows the Department to conduct the demonstration throughout the entire pharmacy benefits program, or at a limited number of sites. If a limited number of sites are selected, the number may not be less than five in each TRICARE region. The Pharmacy Program Office will communicate OTC drug availability through the use of the TRICARE Web site (*http://www.tricare.mil/pharmacy*), public affairs outreach, and through the representative military beneficiary organizations. Notice of an opportunity to participate in the demonstration will be given to the beneficiary at the selected MTF by either the physician writing the prescription or by the MTF pharmacy dispensing the drug.

iii. TRICARE retail pharmacy network. Upon the completion of contract changes and operational considerations, the demonstration project will be conducted within selected pharmacies of the TRICARE retail pharmacy network. The number and location of retail pharmacies that will participate in the demonstration project will be consistent in scope with the requirements in Section 705, which allows the Department to conduct the demonstration throughout the entire pharmacy benefits program, or at a limited number of sites. If a limited number of sites are selected, the number may not be less than five in each TRICARE region. The Pharmacy Program Office will communicate OTC drug availability through the use of the TRICARE Web site (*http://www.tricare.mil/pharmacy*), public affairs outreach, and through the representative military beneficiary organizations. Notice of an opportunity to participate in the demonstration will be given to the beneficiary at the selected retail network pharmacy by the pharmacy dispensing the drug through an electronic message sent to the pharmacist through the Pharmacy Data Transaction Service.

(4) Cost sharing requirements. Beneficiaries will not be charged a cost

share for OTC drugs received under this demonstration project.

(5) Period of demonstration. This demonstration project will begin no later than May 1, 2007 in TMOP, and phased in at MTFs and/or retail pharmacies during the first year and the demonstration will last until the implementation of the combined TRICARE mail and retail contract (TPharm) which is approximately two years from the start date of the demonstration project.

Dated: June 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–11558 Filed 6–14–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. USAF–2007–0023]

Proposed Collection; Comment Request

AGENCY: HQ Air Education and Training Command, AF Officer Accession and Training Schools, AF Junior ROTC, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* DOD HQ AETC/HQ AFOATS/JR announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 14, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **FEDERAL REGISTER** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http:// www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to HQ AFOATS/JRO, ATTN: Ms. Kathy Palmer, 511 East Maxwell Blvd, Maxwell AFB AL 36112–6101, or e-mail *HQ-OperationSupport@afjrotc.net*

Title; Associated Form; and OMB Number: Application for Establishment of Air Force Junior ROTC Unit, AFOATS Form 59; OMB Number 0701–0114.

Needs and Uses: HQ AF Officer Accession and Training Schools, AF Junior ROTC (HQ AFOATS/JR) is responsible for the activation of AF Junior ROTC units at host schools. The information collection requirement is necessary to obtain information about schools that would like to host an Air Force Junior ROTC unit. Respondents are high school officials who provide information about their school. The completed application is used to determine the eligibility of the school to host an Air Force JROTC unit. Failure to submit the application renders the school ineligible for consideration to host an Air Force Junior ROTC unit.

Affected Public: Business or other for profit; not-for-profit institutions.

Annual Burden Hours: 20 hours.

Number of Respondents: 40.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are high school officials who provide information about their school. The completed application is used to determine the eligibility of the school to host an Air Force JROTC unit.

Dated: June 5, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2952 Filed 6–14–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2007–0021]

Proposed Collection; Comment Request

AGENCY: Headquarters, Air Force Reserve Officer Training Corps (AFROTC), Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* Headquarters, Air Force Reserve Officer Training Corps (AFROTC) scholarship program announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information correction; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 14, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submission from members of the public is to make these submissions available for public viewing on the Internet at *http:// www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to The AFROTC Scholarship Program, ATTN: Mr. Jack Sanders, 551 E. Maxwell Blvd, Maxwell AFB AL

36112402, or telephone Mr. Sanders at 334–953–2869.

Title and OMB Number: AFROTC Scholarship Program On Line Application, OMB Control Number 0701–0101.

Needs and Uses: The AFROTC scholarship application is required for completion by high school seniors and recent graduates for the purpose of competing for an AFROTC 4 year scholarship. Respondents must complete and submit their application via the *AFROTC.com* Web site. Submitted data will be evaluated by AFROTC scholarship selections boards to determine eligibility and to select individuals for the award of a college scholarship.

Affected Public: High school seniors and recent graduates who apply for an AFROTC scholarship.

Annual Burden Hours: 8,500.

Number of Respondents: 17,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The following is required to be provided by the applicant and maintained by AFROTC. Names, addresses, SSANs, telephone numbers, transcripts, and resumes.

Dated: June 6, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2953 Filed 6–14–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2007–0024]

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of Admissions, HQ United States Air Force Academy announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 14, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regualtions.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to The Office of Admissions, 2304 Cadet Drive, Suite 2400, USAF Academy, CO 80840. Point of contact is Ms Shawn M. Hordemann, telephone (719) 333–7291.

Title, Associated Form; and OMB Number: United States Air Force Academy School Official's Evaluation of Candidate, United States Air Force Academy Form 145, OMB Control Number 0701–0152.

Needs and Uses: The Information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: June 6, 2007.

Patricia L. Toppings

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2954 Filed 6–14–07; 8:45 am]

BILLING CODE 5001–06–M

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 August 14, 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: June 12, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: System Clearance for Cognitive, Pilot and Field Test Studies.

Frequency:

Affected Public: Individuals or household; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500.

Burden Hours: 4,000.

Abstract: This is a request for a revision to the generic clearance for the National Center for Education Statistics to conduct various procedures to test questionnaires and survey procedures. These procedures include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, experiments with questionnaire design, and usability testing of electronic data collection instruments.

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 3386. 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. E7–11579 Filed 6–14–07; 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 August 14, 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: June 12, 2007.

Angela C. Arrington

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Annual Performance, Financial Need and Certification Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100

Burden Hours: 400

Abstract: The Department of Education (ED) uses this form annually to collect, from the institutions attended by the individual fellows, both the financial need information of students who have Javits fellowships, and the certification of their academic progress. ED uses this data to calculate fellowship amounts for individuals and the total amount of program funding to be sent to the institution.

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 3359. 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. E7–11580 Filed 6–14–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, (Privacy Act) the Department of Education (Department) publishes this notice of a new system of records entitled ''Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students'' (18–13–17). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. It will be conducted under a contract that IES awarded in September 2006. IES has been collaborating with the Department's Office of Postsecondary Education (OPE) to coordinate the study of the impacts of the Upward Bound program on higher-risk students and students as a whole.

The study will address the following questions:

(1) What are the impacts of Upward Bound on student outcomes—including course taking, grades received, test scores, retention in high school, college preparation services received, and college and career expectations—both overall and for higher-risk students?

(2) Does the impact of Upward Bound vary according to grantee practices and characteristics, such as the ratio of higher-risk students to total students served by the grantee?

(3) Does there appear to be a relationship between program impacts and control group students' receipt of similar services, such as tutoring, mentoring, after-school and summer enrichment programs, and college application and financial aid assistance?

The system will contain information about approximately 3,600 students applying for admission at approximately 90 Upward Bound grantees for the 2007–2008 academic year, of which approximately 1,800 will have been offered admission to Upward Bound and 1,800 will serve as a control group for the purposes of this evaluation. These students will be in either 9th or 10th grade during the 2007–2008 academic year. The Upward Bound grantees included in the evaluation will be a sample of all Upward Bound grantees. The system of records will include information about these sampled students, including their names, addresses, demographic information such as race/ethnicity, gender, age, and educational background, attitudes toward school, and educational aspirations.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine use for the system of records referenced in this notice on or before July 16, 2007.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 12, 2007. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on July 22, 2007, unless OMB waives 10 of the 40-day review period for compelling reasons shown by the Department or (2) July 16, 2007 unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine use to Dr. Ricky Takai, Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0002. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*

You must include the term ''Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208–7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act, 5 U.S.C. 552a, requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contain individually identifiable information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB and Congress whenever the agency publishes a new system of records.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 12, 2007.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–17

SYSTEM NAME:

Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue, NW., room 500J, Washington, DC 20208–0002.

(2) Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 02138–1168, and 4550 Montgomery Avenue, Suite 800 North, Bethesda, MD 20814–3343.

(3) The Urban Institute, 2100 M Street, NW., Washington, DC 20037–1264.

(4) Berkeley Policy Associates, 440 Grand Avenue, Suite 500, Oakland, CA 94610–5012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will contain information about approximately 3,600 students applying for admission at approximately 90 Upward Bound grantees for the 2007–2008 academic year, of which approximately 1,800 will have been offered admission to Upward Bound and 1,800 will serve as a control group for the purposes of this evaluation. These students will be in either 9th or 10th grade during the 2007–2008 academic year. The Upward Bound grantees included in the evaluation will be a sample of all Upward Bound grantees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include information about sampled students, including their names, addresses, demographic information such as race/ethnicity, gender, age, and educational background, attitudes toward school, and educational aspirations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This evaluation is authorized under: (1) Section 402H of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a–18; and (2) sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA), 20 U.S.C. 9561(b) and 9563. Section 402H of the HEA explicitly authorizes the Secretary of Education to enter into contracts with organizations to evaluate the effectiveness of Upward Bound and other Federal TRIO programs.

PURPOSE(S):

The information in this system is used for the following purpose: To study, as authorized by section 402H of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a–18, the impacts of Upward Bound on eligible students' preparation for, and success in, postsecondary education. In particular, this system is necessary to provide information for analyses of the impacts of the Upward Bound programs on higher-risk students as well as on other eligible students. The system is also needed for analyses of variations in impacts on students according to the characteristics of Upward Bound projects and control group students' access to, and receipt of, services similar to those offered through Upward Bound.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine use listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor and subcontractors maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each individual that is cross referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site, to the sites of the Department's contractor, and to the sites of the subcontractors where this system of records is maintained, will be controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users' ability to access and alter records within the system.

The contractor selected for this evaluation has been required to establish similar sets of procedures at its sites and at subcontractor sites to ensure confidentiality of data. Their systems will be required to provide reasonable assurance that information identifying individuals is in files physically separated from other research data. The contractor and subcontractors are required to maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include password-protected accounts that authorize users to use the contractor's and subcontractors' information systems but only to access specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and, additional security features that the network administrators establish for projects as needed. The contractor and

subcontractor employees who ''maintain'' (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

In safeguarding personally identifiable information (PII), the contractor and its subcontractors also are subject to the Department's requirements contained in the Department of Education's Handbook for the Protection of Sensitive But Unclassified Information, OCIO–15, and the Department's policy that the transmission of sensitive but unclassified information, including PII, through an e-mail requires that the contents be password protected in a ZIP file.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0002.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

This system will consist of records obtained on eligible students applying to Upward Bound projects at approximately 90 host institutions. The records will consist of parental consent and student consent forms, responses from a baseline survey of students, and information provided by Upward Bound projects on each student. At a later point in time, school records (from school, district, or state databases) and College Board and ACT records will be merged onto the system of records, as will responses from a survey of Upward Bound project coordinators and a follow-up survey of the students. Records in this system of records will be matched with other data solely for research purposes, to study the impacts of Upward Bound on students' preparation for college. The specific matched data will NOT be used to make decisions concerning the rights, benefits, or privileges of the students who participate in this study. After students turn 18 and give their own consent to participate in the study, additional data merges from Federal Student Aid files, National Student Clearing House data, school records, College Board and ACT records, and additional follow-up surveys of students may occur, again solely for research purposes, to study the impacts of Upward Bound on students' postsecondary outcomes. The individual identifiers that would be used to merge the different sources of data would be removed from the data files before the files are used for data analysis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–11599 Filed 6–14–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0016; FRL–8327–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Federal Operating Permit Regulations (Renewal); EPA ICR No. 1713.06, OMB Control No. 2060–0336

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 16, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0016, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to a-and-r-*Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeff Herring, Air Quality Policy Division (C504–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; e-mail address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 9, 2007 (72 FR 6233), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0016, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change,

unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Federal Operating Permit Regulations (Renewal).

ICR numbers: EPA ICR No. 1713.06, OMB Control No. 2060–0336.

ICR Status: This ICR was scheduled to expire on March 31, 2007, but an emergency extension granted by OMB on March 13, 2007 extended the expiration date to June 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Title V of the Clean Air Act (Act) requires States to develop and implement a program for issuing operating permits to all sources that fall under any Act definition of ''major'' and certain other non-major sources that are subject to Federal air quality regulations. The Act further requires EPA to develop regulations that establish the minimum requirements for those State operating permits programs, to oversee implementation of the State programs, and to operate a Federal operating permits program in areas not subject to an approved State program.

The EPA regulations setting forth requirements for the Federal operating permits program are at part 71, title 40, chapter I of the Code of Federal Regulations. These are referred to as the ''Part 71 Federal Operating Permit Regulations,'' which are the subject of the ICR addressed in this notice. The part 71 program is being implemented for sources located in Indian country, Outer Continental Shelf sources, and in areas that do not have part 70 programs.

Burden Statement: The annual public reporting and recordkeeping burden for the part 71 collection of information is estimated to average 221 hours per permitted source. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sources are required to obtain a part 71 permit from EPA if (1) they are located in areas where there is no approved State, local, or Tribal part 70 program (such as Indian country, the Outer Continental Shelf, and Deepwater ports); (2) they are located in areas where the State, local, or Tribal permitting authority is deficient in implementing an approved part 70 program (none currently or expected); or (3) if EPA has objected to a draft part 70 permit and the State, local, or Tribal permitting authority has failed to adequately resolve the objection (rare).

Estimated Number of Respondents: 123 sources.

Frequency of Response: Sources must apply for an initial permit when the source becomes subject, renew permits every 5 years, submit monitoring reports semi-annually, and submit a compliance certification annually. In addition, approximately 50 percent of sources apply for an administrative amendment each year, 50 percent for a minor permit modification, and 10 percent for a significant permit modification.

Estimated Total Annual Hour Burden: 27,218 hours for sources.

Estimated Total Annual Cost: $1,128,784 for sources, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 3,141 hours in the estimated annual burden for sources compared with that identified in the ICR currently approved by OMB. This increase is due to the larger number of sources that will be subject to non-delegated program administration by EPA as a consequence of there being more major sources subject to the program (123 as opposed to 105 in the last ICR) and as a normal consequence of changes in the mix of source activities over time. The increase is not due to any EPA actions to revise regulations or policy since the last ICR update. In its role as the permitting authority for the part 71 program, EPA's estimated annual burden will decrease by over 24,000 hours as compared to the currently approved ICR. This reduction is due to a change in assumptions to eliminate the scenario where EPA issues a Notice of Deficiency and takes over permitting in a State due to poor implementation or enforcement of a part 70 program.

Dated: June 6, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–11572 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2007–0412; FRL–8327–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Central Data Exchange (CDX) Information Collection Request; EPA ICR No. 2002.04, OMB Control No. 2025–0025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 11/30/2007.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2007–0412, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), OEI Docket, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted

during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2007–0412. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Central Data Exchange (CDX), 2823T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2133; fax number: 202–566–1684; e-mail address: *holloway.katrail@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2007–0412, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are state, tribal, and local environmental programs.

Title: Central Data Exchange (CDX) Information Collection Request

ICR numbers: EPA ICR No. 2002.04, OMB Control No. 2025–0025

ICR status: ''This ICR is currently scheduled to expire on 11/30/2007.'' An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The scope of this Information Collection Request has been reduced to CDX activities. Collection activities associated with the CROMERR rule will be addressed in future notices as appropriate. The information planned to be collected will focus on CDX registration and activities. To further the proper performance of the functions of the Agency, CDX will provide Agency's compliance to the Government Paperwork Elimination Act (GPEA). This will reduce burden on public when having to submit data to the EPA. Responses to the collection of information are voluntary. In order for CDX to accommodate CBI, the information collected must be in accordance with the confidentiality regulations set forth in 40 CFR Part 2, Subpart B. Additionally, EPA will ensure that the information collection procedures comply with the Privacy Act of 1974 and the OMB Circular 108.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.4 hours per registrant. Burden means the total time, effort, or financial resources expended

by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 17,000.

Frequency of response: Annually.

Estimated total average number of responses for each respondent: 17,000.

Estimated total annual burden hours: 23,800 hours.

Estimated total annual costs: $850,000. This includes an estimated burden cost of $225,000 and an estimated cost of $225,000 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

For CDX flows that are subject to Cross-Media Electronic Reporting Rule (CROMERR) electronic signature requirements, user registration involves the collection of information sufficient to establish the identity of the user and his or her authorization to sign the report(s) in question. For purpose of establishing identity, in most cases the registration process involves asking the user to sign and submit a paper electronic signature agreement that sets forth the terms and conditions under which the user will electronically sign submissions to CDX; the user will also be asked to supply certain items of personal information, including—in a few cases—government-issued identifiers such as a social security number. For purposes of establishing signatory authorization, registration may involve collecting information about the user's position in the organization for which s/he will sign reports, either from the user or from some official in the organization.

This ICR renewal accounts for the burden on registrants of providing this information for CDX flows. When this ICR was originally submitted for approval, it accounted for the CROMERR-related burden on registrants for all EPA programs that might incorporate electronic reporting, whether or not the program's electronic reporting involved a CDX flow. By agreement with the affected programs, the CROMERR burden not connected with a CDX flow will now be accounted for under the ICRs specific to those programs. As a result, the burden associated with this CDX-specific ICR renewal is substantially reduced from what was calculated for the original version.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(IV) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 5, 2007.

Doreen Sterling,

Director, Information Exchange & Services Division.

[FR Doc. E7–11573 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–AO–2007–0408; FRL–8327–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulatory Pilot Projects (Renewal); EPA ICR No. 1755.08; OMB Control No. 2010–0026

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on October 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2007–0408 identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* OA Docket, EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Office of the Administrator Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–AO–2007–0408 identified by the Docket ID. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Gerald Filbin, Office of Policy, Economics, and Innovation, (1807T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2182; fax number: 202–566–2220; e-mail address: *filbin.gerald@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–AO–2007–0408, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of the Administrator Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of the Administrator Docket is 202–566–0219.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OA–2007–0408.

Affected entities: Entities potentially affected by this action are primarily state environmental agencies seeking information from facilities participating in or whose participation is being solicited for pilot projects to test innovation in environmental permitting. State and tribal environmental agencies that wish to provide input for the annual competition solicitation, or that submit proposals in the annual competition are also effected, as well as state agencies that are recipients of State Innovation Grants that are required to report on progress and outcomes for each grant-funded project. Other parties affected by this request may include industrial facilities and state agencies that have been participants in Project XL in circumstances where projects are being completed or terminated and information characterizing the outcomes of those projects is being sought by EPA to close out those individual projects.

Title: Regulatory Reinvention Pilots.

ICR numbers: EPA ICR No. 1755.08, OMB Control No. 2010–0026.

ICR status: This ICR is currently scheduled to expire on October 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This is an information collection request renewal that will allow for the continued solicitation of proposals for innovative pilot projects and to allow EPA to continue its commitments to monitor the results of previous and ongoing pilot tests of regulatory innovation. The renewal of this ICR is important as it will allow the Agency to measure performance outcomes of regulatory innovation piloting and to assess the broader applicability of those pilot projects. The ICR is also necessary to allow EPA to identify State and Tribal co-regulators as well as additional regulated entities who are interested in partnering with EPA in innovative pilot projects, allowing the Agency to continue its commitment to innovation and regulatory flexibility with facilities, communities, and states in achieving environmental results. The renewal of this ICR will allow OEPI to continue to receive and work with project sponsors on proposals for innovation. Responses related to Project XL are voluntary, as are any responses by state environmental agencies to EPA's request for input for the design of the annual competition. States seeking funding for an environmental regulatory innovation project must submit a project proposal in the annual competition (see *http://www.epa.gov/innovation/stategrants*) to receive a grant award and submittal of a proposal does not automatically guarantee an assistance agreement between EPA and a state for the purpose of implementing an innovation project. In requiring the submittal of a proposal in competition, EPA is adhering to its own policies on competition (EPA 5700.7) and performance measurement (EPA 5700.8). Similarly, states implementing innovative regulatory pilot tests in projects funded by a State Innovation Grant are required to report on progress during the operation of a

project and to provide a final project report summarizing outcomes and major findings of each project. EPA's policy on performance measurement in assistance agreements is an implementation outcome under the Government Performance and Results Act (GPRA section 1115(a)(4) and section 1116(c)). EPA's innovation piloting efforts are multi-media in nature and include programs authorized under the full range of authorizing legislation (e.g., the Clean Air Act, Section 103(b)(3) (42 U.S.C. 7403(b)(3)) the Clean Water Act, Section 104(b)(3) (33 U.S.C. 1254(b)(3)); the Solid Waste Disposal Act, Section 8001 (42 U.S.C. 6981); the Toxics Substances Control Act, Section 10 (15 U.S.C. 2609); the Federal Insecticide, Fungicide, and Rodenticide Act, Section 20 (7 U.S.C. 136r); and the Safe Drinking Water Act, Sections 1442(a) and (c) (42 U.S.C. 1(a) and (c)).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 44 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential annual respondents: 1270.

Frequency of response: 35 quarterly; 1234 annually.

Estimated total average number of responses for each respondent: 1.2.

Estimated total annual burden hours: 7748 hours.

Estimated total annual costs: $331,460. This includes an estimated burden cost of $331,460 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 2292 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the need to collect information on project performance and outcomes in the form of quarterly reporting and final project reporting for current and future projects that is not addressed in other ICRs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 24, 2007.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. E7–11577 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6688–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended.

Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in F.R. dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070147, ERP No. D–AFS–J65479–MT, Trapper Bunk House Land Stewardship Project, Reduce Risk from Stand-Replacing and Uncontrollable Fires, Improve Resiliency and Provide Forest Products, Fuel Reduction Research and Watershed Improvement, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT.

Summary: EPA supports project objectives to improve watersheds, reduce fire risk, improve vegetative resiliency, conduct fuel reduction research, and provide timber. However, EPA expressed environmental concerns about potential impacts to water quality. Rating EC2.

EIS No. 20070150, ERP No. D–FRC–F03010–WI, Gurardian Expansion and Extension Project, Construction and Operation Natural Gas Pipeline Facilities, Jefferson, Dodge, Fond du Lac, Calument, Brown, Walworth, Outagamie Counties, WI.

Summary: EPA expressed environmental concern about water quality and wetland impacts and requested additional analysis and mitigation for these impacts. Rating EC2.

EIS No. 20070152, ERP No. D–GSA–F60010–OH, Cincinnati National Institute for Occupational Safety and Health (NIOSH) Laboratories Consolidation, Site Selection, Hamilton and Clermont Counties, OH.

Summary: EPA expressed environmental concerns about air quality impacts, and water quality/wetland impacts, and requested additional information on mitigation. Rating EC2.

Final EISs

EIS No. 20070142, ERP No. F–BLM–J01081–WY, Maysdorf Coal Lease by Application (LBA) Tract, (Federal Coal Application WYW154432), Implementation, Campbell Counties, WY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070163, ERP No. F–BLM–L65518–ID, Eastside Township Fuels and Vegetation Project, Address the Forest Health, Fuels, Safety, and Watershed Issues, Elk City, Idaho County, ID.

Summary: EPA continues to have environmental concerns about the project due to impacts of short term sediment loading listed streams.

EIS No. 20070166, ERP No. F–AFS–L65498–ID, Newsome Creek Watershed Rehabilitation, Stream Restoration and Improvement and Decommissioning of Roads, Red River Ranger District, Nez Perce National Forest, Idaho County, ID.

Summary: EPA continues to have environmental concerns about mercury contamination impacts from past mining practices which could pose a

threat to human health, fish and aquatic biota. The Record of Decision should include data on levels of mercury contamination in the project area and mitigation measures.

EIS No. 20070170, ERP No. F–NPS–E65081–FL, Castillo de San Marcos National Monument, General Management Plan, Implementation, City of St. Augustine, St. Johns County, FL.

Summary: EPA does not object to the action as proposed. EIS No. 20070173, ERP No. F–COE–E36184–FL, Central and Southern Florida Project, New Authorization for Broward County Water Preserve Areas, South Florida Water Management District (SFWMD), Comprehensive Everglades Restoration Plan, (CERP), Broward County, FL.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070178, ERP No. F–AFS–J65465–00, Kootenai National Forest Invasive Plant Management, Proposes to Manage Noxious Weed and Invasive Plant Species, Lincoln Sanders, Flathead Counties, MT and Bonner and Boundary Counties, ID.

Summary: EPA supports the integrated weed management program; however, we continue to suggest the need for adequate mitigation measures during herbicide applications which could potentially adversely impact water quality and aquatic resources.

EIS No. 20070198, ERP No. F–HUD–L85028–WA, Westpark Redevelopment Master Plan, Redevelop of 82-acre Site to create a Mixed-Use, Mixed-Income Pedestrian-Oriented Urban Community, Funding and US Army COE Section 10 Permit, City of Bremerton, Kitsap County, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: 06/11/2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–11575 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6687–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 06/04/2007 Through 06/08/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070232, Final EIS, FHW, 00, Bellevue Bridge Study, To Improve Connectivity between the Omaha Metropolitan Area and across the Missouri River from U.S. 75 to I–29, Coast Guard Permit, NPDES Permit, U.S. Army COE Section 10 and 404 Permits, Mills County, IA and Sarp County, NE., Wait Period Ends: 07/24/2007, Contact: Philip Barnes 515–233–7300.

EIS No. 20070233, Final EIS, NPS, CO, Great Sand Dunes National and Preserve. General Management Plan/Wilderness Study, Implementation, Alamos and Saguache Counties, CO, Wait Period Ends: 07/16/2007, Contact: Suzanne M. Stutzman 303–987–6671.

EIS No. 20070234, Draft EIS, FHW, TX, U.S. 290 Corridor, Propose to Construct Roadway Improvements from Farm-to-Market (FM) 2920 to Interstate Highway (IH) 610, Funding and Right-of-Way Grant, Harris County, TX, Comment Period Ends: 08/03/2007, Contact: Donald E. Davis 512–536–5960.

EIS No. 20070235, Final EIS, BLM, CA, Alturas Field Office Project, Resource Management Plan, Implementation, Alturas Field Office Project, Resource Management Plan, Implementation, Lassen, Modoc, Shasta and Siskiyou Counties, CA, Wait Period Ends: 07/16/2007, Contact: Sue Noggles 530–252–5345.

EIS No. 20070236, Final EIS, BLM, 00, Eagle Lake Field Office Project, Resource Management Plan, Implementation, Lassen, Plumas, Sierra Counties, CA and Washoe County, NV, Wait Period Ends: 07/16/2007, Contact: Sue Noggles 530–252–5345.

EIS No. 20070237, Final EIS, BLM, 00, Surprise Field Office Project, Resource Management Plan, Implementation, Cedarville, Modoc and Lassen, CA and Washoe and Humboldt Counties, NV, Wait Period Ends: 07/16/2007 Contact: Sue Noggles 530–252–5345.

EIS No. 20070238, Draft EIS, AFS, 00, Mt. Ashland Late-Successional Reserve Habitat Restoration and Fuels Reduction Project, To Promote and Maintain Late-Successional Habitat, Oak Ranger District, Klamath National Forest, Siskiyou County, CA and Jackson County, OR, Comment Period Ends: 07/30/2007, Contact: Susan Stresser 530–841–4538.

EIS No. 20070239, Draft EIS, AFS, CA, Sugarberry Project, Proposes to Protect Rural Communities from Fire Hazards by Constructing Fuel Breaks Known as Defensible Fuel Profile Zones (DFPZs), Feather River Ranger District, Plumas National Forest, Plumas, Sierra, Yuba Counties, CA, Comment Period Ends: 07/30/2007, Contact: John Zarlengo 530–534–6500.

EIS No. 20070240, Final EIS, AFS, 00, Northern Rockies Lynx Management Direction, Selected Alternative F, Conservation and Promote Recovery of the Canada Lynx, NFS and BLM to Amend Land Resource Management Plans for 18 National Forests (NF), MT, WY, UT, and ID, Wait Period Ends: 07/16/2007, Contact: Raymond Smith 406–329–3316.

EIS No. 20070241, Draft EIS, NPS, 00, Quarry Visitor Center Treatment Project, To Address the Structural Deterioration, Dinosaur National Monument, CO and UT, Comment Period Ends: 08/10/2007, Contact: Tom Thomas 303–969–2310.

EIS No. 20070242, Final EIS, COE, OH, Dover Dam Safety Assurance Program Project, Modifications and Upgrades, Funding, Muskingum River Basin, Tuscarawas County, OH, Wait Period Ends: 07/16/2007, Contact: Rodney G. Cremeans 304–399–5170.

EIS No. 20070243, Draft EIS, AFS, WY, Thunder Basin Analysis Area Vegetation Management, To Implement Best Management Grazing Practices and Activities, Douglas Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Campbell, Converse and Weston Counties, WY, Comment Period Ends: 07/30/2007, Contact: Kyle Schmitt 307–358–4690.

EIS No. 20070244, Final EIS, FRC, 00, North Baja Pipeline Expansion Project, Docket Nos. CP06–61–000 and CP01–23–000, Construction and Operation a Natural Gas Pipeline System, Land Use Plan Amendment, Right-of-Way Grant, Temporary Use Permits and U.S. Army COE Section 10 and 404 Permits, La Paz County, AZ and Riverside and Imperial Counties, CA, Wait Period Ends: 07/16/2007, Contact: Andy Black 1–866–208–3372.

EIS No. 20070245, Final EIS, FHW, NY, Long Island Expressway (LIE) Rest Area Upgrade Project, Upgrading the Existing Rest Area from Route 1–495/Long Island Expressway between Exits 51 and 52, Funding, Town of Huntington, Suffolk County, NY, Wait Period Ends: 07/16/2007, Contact: Robert Arnold 578–431–4127.

EIS No. 20070246, Final EIS, MMS, AK, Chukchi Sea Planning Area Oil and Gas Lease Sale 193 and Seismic Surveying Activities, Offshore Marine Environment, Chukchi Sea Coastal Plain, and the North Slope Borough of Alaska, Wait Period Ends: 07/16/2007, Contact: James Bennett 703–787–1660.

EIS No. 20070247, Draft EIS, NRC, NY, GENERIC—James A. Fitzpatrick Nuclear Power Plant, License Renewal of Nuclear Plant, Site Specific Supplement 31 to NUREG–1437, Town of Sriba, NY, Comment Period Ends: 09/05/2007, Contact: Jessie M. Muir 301–415–0491.

Dated: June 12, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–11576 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2006–00581; FRL–8326–2]

Connecticut Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Branford, East Haven, New Haven, West Haven, Orange, Milford, Stratford, Bridgeport, Fairfield, Westport, Norwalk, Darien, Stamford, and Greenwich. The area also includes the Housatonic River from the Derby Dam and the Quinnipiac River from the southern border of North Haven.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copy-righted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–0538. Fax number: (617) 918–1505. e-mail address: *Rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: This Notice of Determination is for the state waters of Branford, East Haven, New Haven, West Haven, Orange, Milford, Stratford, Bridgeport, Fairfield, Westport, Norwalk, Darien, Stamford, and Greenwich. The area also includes the Housatonic River from the Derby Dam and the Quinnipiac River from the southern border of North Haven, Connecticut. The area of designation includes:

Waterbody/general area	Latitude	Longitude
From Byram Point at the western border of Greenwich	40°59′03.15″N	73°39′24.55″W
Southeast following the boundary between CT & NY to a point in LIS	40°57′03.23″N	73°36′46.42″W
Easterly following the boundary between CT & NY to a point due south of Hoadley Point at the eastern border of Branford.	41°07′51.17″N	72°44′09.73″W
Due north to Hoadley Point at the eastern border of Branford	41°15′22.88″N	72°44′09.73″W

The proposed area also includes the navigable reaches of all Connecticut rivers and tidal streams that drain into Long Island Sound within its bounds, including the Housatonic River from the Derby Dam and the Quinnipiac River from the southern border of North Haven.

On February 23, 2007, notice was published that the State of Connecticut had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Branford, East Haven, New Haven, West Haven, Orange, Milford, Stratford, Bridgeport, Fairfield, Westport, Norwalk, Darien, Stamford, and Greenwich. The area also includes the Housatonic River from the Derby Dam and the Quinnipiac River from the southern border of North Haven. Nine comments were received on this petition.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area'' (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the State of Connecticut certifies that there are 43 pumpout facilities located within the proposed area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation and information from site visits by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location (figure)	Contact information	Hours of operation (call ahead to verify)
Grass Island Municipal Pumpout	Greenwich Harbor, Greenwich	No Radio, 203–618–9695	May 1–Oct 31, daily, 8 a.m. to 8 p.m.
Beacon Point Marine	Mianus River, Cos Cob	VHF CH 9, 203–661–4033	April 1–Nov 30, M–F, 8 a.m. to 5 p.m.; Sat 8 a.m. to 6 p.m.; Sun 8 a.m. to 4 p.m.
Mianus River Boat & Yacht Club	Mianus River, Cos Cob	No Radio, 203–869–4689	April 1–Nov 30, daily, 24 hours.
Riverside Yacht Club	Mianus River, Cos Cob	203–637–1706	No Data.
Soundkeeper Pumpout Boat	Greenwich Harbor, Greenwich	VHF CH 77, 1–800–933–SOUND.	May 1–Labor Day, W, Th, F, 1 p.m. to 5 p.m.; Sat, Sun 10 a.m.–6 p.m. Call for Fall Hours.
Cummings Park Marina	Westcott Cove, Stamford	No Radio, 203–977–5139	Apr 1–Nov 30, daily, 24 hours.
Czescik Municipal Marina	Stamford Harbor, Stamford	No Radio, 203–977–5008	Year round, daily, 24 hours.
Harbour Square Marina	Stamford Harbor East Branch, Stamford.	VHF CH 9, 203–324–3331	May 1–Nov 30, daily, 9 a.m. to 8 p.m.; Dec 1–Dec 31, daily 9 a.m. to 3 p.m.
Soundkeeper Pumpout Boat	Stamford Harbor, Stamford	VHF CH 77, 1–800–933–SOUND.	May 1–Labor Day. Call for hours.
Stamford Landing Marina	Stamford Harbor West Branch Stamford.	VHF CH 9, 203–965–0065	May 1–Oct 31, daily, 9 a.m. to 5 p.m.
Brewer Yacht Haven	Stamford	No data	No data.
Avalon	Stamford Harbor	No data	No data.
Soundkeeper Pumpout Boat I	Norwalk Harbor, Fivemile River, Campo Cove, Saugatuck River.	VHF CH 77, 1–800–933–SOUND.	May 1–Labor Day, T, Th, F, 8 a.m. to 6 p.m. Call for Fall Hours.
Soundkeeper Pumpout Boat II	Norwalk Harbor, Fivemile River, Campo Cove, Saugatuck River.	VHF CH 77, 1–800–933–SOUND.	May 1–Labor Day, T, Th, F, 8 a.m. to 6 p.m. Call for Fall Hours.
Norwalk Cove Marina, Inc	Charles Creek, Norwalk	VHF CH 9, 72, 203–838–2326	Jan 1–Nov 30, daily, 8 a.m. to 6 p.m.
Norwalk Visitor's Dock	Norwalk Harbor, Norwalk	VHF CH 9, 203–866–8810	May 1–Oct 31, daily, 7 a.m. to 6 p.m.
Rex Marine Center, Inc	Norwalk Harbor, Norwalk	VHF CH 9, 203–866–5555	Apr 1–Nov 30, daily, 8 a.m. to 5 p.m.
South Norwalk Boat Club	Norwalk Harbor, Norwalk	No data	No data.
The Boatworks, Inc	Fivemile River, Rowayton	VHF CH 68, 203–866–9295	Apr 1–Nov 30, daily, 8 a.m. to 4:30 p.m.
Compo Yacht Basin	Saugatuck River, Westport	VHF CH 11, 16, 203–227–9136	May 1–Sept 30, daily, 8 a.m. to 8 p.m.
Pequot Yacht Club	Southport Harbor, Fairfield	VHF CH 69, 203–255–5740	May 15–Oct 1, daily, 9 a.m. to 8 p.m.
South Benson Marina	Ash Creek, Fairfield	VHF CH 9, 16, 203–256–3010	May 1–Nov 30, daily, 8 a.m. to 6 p.m.
Captain's Cove Seaport	Black Rock Harbor, Bridgeport	VHF CH 18, 203–335–1433	May 1–Sept 30, daily, 9 a.m. to 4 p.m.
Cedar Marina, Inc	Cedar Creek, Bridgeport	VHF CH 9, 203–335–6262	April 1–Nov 30, daily, 8 a.m. to 5 p.m.
City of Bridgeport Pumpout Boat	Black Rock and Bridgeport Harbors, Bridgeport.	VHF CH 6, 9, 13, 16, 203–384–9777.	Apr 1–Oct 31, daily, 9 a.m. to 5 p.m.
Fayerweather Yacht Club	Black Rock Harbor, Bridgeport	VHF CH 14, 203–576–6796	May 15–Oct 15, daily, 8 a.m. to 8 p.m.
Miamogue Yacht Club Incorporated.	Johnson's Creek, Bridgeport Harbor.		(203) 334–9882
Brewer Stratford Marina	Housatonic River, Stratford	VHF CH 9, 10, 203–378–9300	Year round, daily, 9 a.m. to 5 p.m.
Caswell Cove Marina	Stratford	No data	No data.
Stratford Boardwalk Marina (Formerly Marina at the Dock).	Housatonic River, Stratford	VHF CH 9, 203–378–9300	Apr 1–Oct 31, daily 8 a.m. to 5 p.m.
Town of Stratford Pumpout Boat	Housatonic River, Stratford	VHF CH 68, 203–381–2049	May 15–Oct 31, Th–M, 10 a.m. to 6 p.m.
Milford Harbor Marina	Milford Harbor, Milford	VHF CH 68, 203–877–1475	May 1–Oct 31, daily, 8 a.m. to 5 p.m.
Milford Landing	Milford Harbor, Milford	VHF CH 9, 203–874–1610	Apr 1–Nov 30 daily, 7 a.m. to 8 p.m.
West Cove Co-op Marina	West River, West Haven	No Radio, 203–933–3000	May 1–Sept 30, W–F, 3 p.m. to 7 p.m.; Sat and Sun, 8 a.m. to 7 p.m.
City of New Haven Long Wharf	New Haven Harbor, New Haven.	No Radio, 203–946–6779	Memorial Day–Labor Day, M–F, 9 a.m. to 5 p.m.; Sat, Sun 10 a.m. to 5 p.m.
Oyster Point Marina	New Haven Harbor, New Haven.	VHF CH 9, 11, 203–624–5895	Apr 1–Oct 31, daily, 8 a.m. to 5 p.m.
Waucoma Yacht Club	Quinnipiac River, New Haven	VHF CH 9, 203–789–9530	Memorial Day–Nov 15, M–F, 3 p.m. to 7 p.m.; Sat and Sun, 10 a.m. to 7 p.m.
Branford Yacht Club	Branford River, Branford	VHF CH 9, 203–488–0798	June 1–Sept 30, daily, 8 a.m. to 7:30 p.m.; April 1–May 31 and Oct 1–Oct 31, daily, 8 a.m. to 4:30 p.m.
Brewer Bruce & Johnson's Marina, Inc.	Branford River, Branford	VHF CH 9, 203–488–8329	Apr 1–Nov 30, daily, 8 a.m. to 4:30 p.m.
Goodsell Point Marina	Branford River, Branford	No Radio, 203–488–5292	May 1–Nov 30, daily, 9 a.m. to 5 p.m.
Pier 66 Marina	Branford River, Branford	VHF Ch 9, 203–488–5613	N/A.
Pine Orchard Yacht Club	Branford	No data	No data.
Town of Branford Pumpout Boat	Branford River & Thimble Islands, Branford.	VHF CH 9, 203–430–9305	May 15–Oct 31, Sat, 8 a.m. to 3 p.m.; Sun, 8 a.m. to 4 p.m.

Dated: May 29, 2007.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. E7–11312 Filed 6–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, June 19, 2007, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii) and (9)(B), Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: June 12, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–11664 Filed 6–14–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, June 19, 2007, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposed Amendment of Part 344 to Extend the Time Period to Report Quarterly Personal Securities Trading.

Memorandum and resolution re: Final Rule: Depository Institution Management Officials Interlocks Act.

Discussion Agenda: Memorandum and resolution re: FDIC Pilot Project for Affordable Small-Dollar Loans.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: June 12, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–11665 Filed 6–14–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Stock Redemption Notification

Agency form number: FR 4008

OMB control number: 7100–0131

Frequency: On occasion

Reporters: Banks holding companies (BHCs)

Annual reporting hours: 233 hours

Estimated average hours per response: 15.5 hours

Number of respondents: 15

General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)) and is generally not given confidential treatment.

Abstract: The Bank Holding Company Act (BHC Act) and Regulation Y generally require a BHC to seek prior Federal Reserve approval before purchasing or redeeming its equity securities. Given that a BHC is exempt from this requirement if it meets certain financial, managerial, and supervisory standards, only a small portion of proposed stock redemptions actually require the prior approval of the Federal Reserve. There is no formal reporting form. The Federal Reserve uses the information provided in the redemption notice to fulfill its statutory obligation to supervise BHCs.

2. Report title: Notice Claiming Status as an Exempt Transfer Agent

Agency form number: FR 4013

OMB control number: 7100–0137

Frequency: On occasion

Reporters: Banks, bank holding companies (BHCs), and certain trust companies

Annual reporting hours: 12

Estimated average hours per response: 2

Number of respondents: 6

General description of report: This information collection is required (15 U.S.C. §78q–1(c)) and the Federal Reserve is authorized to collect this data (15 U.S.C. §78c(a)(34)(B)(ii)). The data collected are not given confidential treatment.

Abstract: Banks, BHCs, and trust companies subject to the Federal Reserve's supervision that are low–

volume transfer agents voluntarily file the notice on occasion with the Federal Reserve. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the Securities and Exchange Commission (SEC). The Federal Reserve uses the notices for supervisory purposes because the SEC has assigned to the Federal Reserve responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. There is no formal reporting form, and each notice is filed as a letter.

3. Report title: Investment in Bank Premises Notification

Agency form number: FR 4014

OMB control number: 7100–0139

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 18

Estimated average hours per response: 30 minutes

Number of respondents: 36

General description of report: This information collection is mandatory (12 U.S.C. 371d(a)) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to seek prior Federal Reserve approval before making an investment in bank premises that exceeds certain thresholds. There is no formal reporting form, and each required request for prior approval must be filed as a notification with the appropriate Reserve Bank of the state member bank. The Federal Reserve uses the information provided in the notice to fulfill its statutory obligation to supervise state member banks.

4. Report title: Information Collections Related to the Gramm–Leach–Bliley (GLB) Act

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023

OMB control number: 7100–0292

Frequency: On occasion

Reporters: BHCs, foreign banking organizations (FBOs), and state member banks

Annual reporting hours: 2,421 hours

Estimated average hours per response: FR 4010: BHC 3 hours, FBOs 3.5 hours; FR 4011: 10 hours; FR 4012: BHCs decertified as financial holding companies(FHCs) 1 hour, FHCs back into compliance 10 hours; FR 4017: 4 hours; FR 4019: 1 hour; FR 4023: 50 hours

Number of respondents: FR 4010: BHC 49, FBOs 8; FR 4011: 4; FR 4012: BHCs decertified as financial holding companies (FHCs) 11, FHCs back into compliance 28; FR 4017: 2; FR 4019: Regulatory relief requests 5, Portfolio company notification 2; FR 4023: 38

General description of report: The FR 4010 is required to obtain a benefit and is authorized under Section 4(l)(1)(C) of the BHC Act, 12 U.S.C. § 1843(l)(l)(C); section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a); and sections 225.82 and 225.91 of Regulation Y, 12 C.F.R. 225.82 and 225.91.

The FR 4011 is voluntary and is authorized under Sections 4(j) and 4(k) of the BHC Act, 12 U.S.C. § 1843(j) through (k); and sections 225.88, and 225.89, of Regulation Y, 12 C.F.R. 225.88, and 225.89.

The FR 4012 is mandatory and is authorized under Section 4(l)(1) and 4(m) of the BHC Act, 12 U.S.C. § 1843(l)(1) and (m); section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a); and sections 225.83 and 225.93 of Regulation Y, 12 C.F.R. 225.83 and 225.93.

The FR 4017 is required to obtain a benefit and is authorized under Section 9 of the Federal Reserve Act, 12 U.S.C. § 335; and section 208.76 of Regulation H, 12 C.F.R. 208.76.

The FR 4019 is required to obtain a benefit and is authorized under Section 4(k)(7) of the BHC Act, 12 U.S.C. § 1843(k)(7); and sections 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2) of Regulation Y, 12 C.F.R. 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2).

The FR 4023 is mandatory and is authorized under Section 4(k)(7) of the BHC Act, 12 U.S.C. § 1843(k)(7); and sections 225.171(e)(4) and 225.175 of Regulation Y, 12 C.F.R. 225.171(e)(4) and 225.175.

For the FR 4010, FR 4011, FR 4017, and FR 4019, a company may request confidential treatment of the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (FOIA)(5 U.S.C. 552 (b)(4) and (b)(6)). Since the Federal Reserve does not collect the FR 4023, no issue of confidentiality under the FOIA arises. FOIA will only be implicated if the Board's examiners retained a copy of the records in their examination or supervision of the institution, and would likely be exempt from disclosure pursuant to FOIA (5 U.S.C. '552(b)(4), (b)(6), and (b)(8)).

Abstract: Each BHC or FBO seeking FHC status must file the FR 4010 declaration, which includes information needed to verify eligibility for FHC status. By filing the FR 4011, a requestor may ask the Board to determine that an activity is financial in nature, to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature, or to approve engagement in an activity complementary to a financial activity. Any FHC ceasing to meet capital or managerial prerequisites for FHC status must notify the Board by filing the FR 4012 of the deficiency, and often must submit plans to the Board to cure the deficiency. Any state member bank seeking to establish a financial subsidiary must seek the Board's prior approval by submitting the FR 4017. Any FHC seeking to extend the 10–year holding period for a merchant banking investment must submit the FR 4019 to apply for the Board's prior approval, and a FHC also must notify the Board if it routinely manages or operates a portfolio company for more than nine months. All FHCs engaging in merchant banking activities must keep records of those activities, and make them available to examiners as specified in the FR 4023 requirements.

There are no formal reporting forms for these collections of information, which are event generated, though in each case the type of information required to be filed is described in the Board's regulations. These collections of information are required pursuant to amendments made by the GLB Act to the Bank Holding Company Act or the Federal Reserve Act, or Board regulations issued to carry out the GLB Act.

Current Actions: On April 2, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 15692) requesting public comment for 60 days on the extension, without revision, of the: FR 4008, FR 4013, FR 4014 and information collections related to the GLB Act: FR 4010, FR 4011, FR 4017, FR 4019, and FR 4023. The comment period for this notice expired on June 1, 2007. No comments were received.

Board of Governors of the Federal Reserve System, June 12, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11549 Filed 6–14–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. NorthStar Banking Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of NorthStar Bank (in organization), both of Tampa, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Merchants Financial Group, Inc., Winona, Minnesota; to acquire 100 percent of the voting shares of Jerema, Inc., and thereby indirectly acquire voting shares of The First National Bank in Cannon Falls, both of Cannon Falls, Minnesota.

Board of Governors of the Federal Reserve System, June 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11554 Filed 6–14–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

No FEAR Act Notice

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) is providing notice to its employees, former employees, and applicants for federal employment about the rights and remedies available to them under the Federal antidiscrimination, whistleblower protection, and retaliation laws. This notice fulfills the FTC's initial notification obligation under the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations at 5 CFR part 724.

FOR FURTHER INFORMATION CONTACT: Barbara Wiggs, Director, Office of Equal Employment Opportunity (EEO), by mail at Federal Trade Commission, Mail Drop H-413, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by telephone at (202) 326-2197. Additional information can be found on the FTC's website at *http://www.ftc.gov*.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. *See* Pub. L. 107-174, codified at 5 U.S.C. 2301 note. As stated in the full title of the Act, the Act is intended to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Pub. L. 107-174, § 101(1).

The Act also requires this agency to provide this notice to its Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection, and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, national origin, religion, sex, age, disability, sexual orientation, parental status or any other non-merit factor. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.*, 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site at *http://www.osc.gov*.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant

because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the FTC (e.g., Office of EEO, Human Resources Management Office, or Office of the General Counsel). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found on the EEOC Website at *http://www.eeoc.gov* and on the OSC Web site at *http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Donald S. Clark,

Secretary.

[FR Doc. E7–11600 Filed 6–14–07; 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

United States Postal Service Study

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of public comments.

SUMMARY: The Federal Trade Commission is extending the deadline for filing public comments on several issues in connection with the preparation of a report required by the Postal Accountability and Enhancement Act.

DATES: Public comments must be received on or before August 6, 2007.

ADDRESSES: Comments should refer to ''USPS Study, Project No. P071200'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and the original and two copies should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex F), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comment in electronic form, as prescribed below. Comments containing any material for which confidential treatment is requested, however, must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Comments filed in electronic form (except comments containing any confidential material) should be submitted to the FTC by clicking on the following Web link: *https://secure.commentworks.com/FTC/USPSStudy* and following the instructions on the Web-based form. You also may visit *http://www.regulations.gov* to read this request for public comment and may file an electronic comment through that Web site. The FTC will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to James Cooper, Federal Trade Commission, Office of Policy Planning, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Email: jcooper1@ftc.gov; Telephone: 202-326-3367.

SUPPLEMENTARY INFORMATION: On December 20, 2006, President Bush signed the Postal Accountability and Enhancement Act into law. The Act requires the Federal Trade Commission to prepare and submit to the President, Congress, and the Postal Regulatory Commission (''PRC'') a comprehensive report, by December 20, 2007, identifying Federal and State laws that apply differently to the United States Postal Service — with respect to the competitive category of mail — and to private companies providing similar products.

On May 1, 2007, the Commission announced that it was seeking public comment on several issues to assist in the preparation of the report, and published a Notice to that effect in the **Federal Register**. *See* 72 Fed. Reg. 23,820 (May 1, 2007). The Notice also designated July 2, 2007, as the deadline for filing public comments. A number of prospective commenters have now requested a thirty-day extension of the public comment period, in order to ensure that they will be able to provide the Commission with the best information available. In light of the number and importance of the issues on which it has requested comment, the Commission has determined to extend the filing deadline until August 6, 2007.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–11607 Filed 6–14–07; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the thirteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from on Tuesday, July 10, 2007, from 8:30 a.m. to approximately 5 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20001. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The meeting will focus primarily on the issue of gene patents and licensing practices and consist of a series of presentations and discussions involving international experts on how other countries are addressing questions related to the impact of gene patents and licensing practices on patient access to genetic tests. In addition, the SACGHS task force on oversight of genetic testing will present a brief report on the progress of its fact-finding and consultative efforts with regard to the Secretary's charge. The Committee will also be updated about the public comments received in response to the Committee's solicitation on its draft report on pharmacogenomics.

Time will be provided for public comments. The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health, and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: June 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2963 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (Ntp); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Second Bisphenol A Expert Panel Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: CERHR announces the second meeting of the CERHR Expert Panel on Bisphenol A on August 6–8, 2007, at the Hilton Alexandria Old Town in Alexandria, VA. This meeting is open to the public with time scheduled for oral public comment. Attendance is limited only by the available meeting space.

DATES: The second expert panel meeting on bisphenol A will be held August 6–8, 2007. The interim draft expert panel report containing sections 1–4 is currently available for public comment [**Federal Register**, May 1, 2007 (Vol. 72, No. 83, pages 23833–4)]. Written public comments on the interim draft report must be received by June 20, 2007. July 30, 2007 is the deadline for pre-registration to attend the meeting, to pre-register to provide oral comments, and to submit written materials intended to supplement the oral remarks.

ADDRESSES: The second expert panel meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA (located across the street from the King Street Metro Stop). Written comments should be sent to Dr. Michael D. Shelby, CERHR Director [NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail)]. Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. Michael D. Shelby, CERHR Director, 919–541–3455, *shelby@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

CERHR convened the expert panel on March 5–7, 2007 to complete its report on the potential reproductive and developmental hazards of bisphenol A. The panel discussed and made revisions to the draft expert panel report, but because of the length and complexity of this evaluation, the panel was unable to complete its task. Information about the meeting and the draft interim expert panel report, which shows all edits to date, are available on the CERHR Web site (*http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol.html*).

The expert panel will reconvene on August 6–8, 2007, for a second meeting at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA. The meeting will begin each day at 8:30 a.m. and continue until adjournment. It is anticipated to adjourn by noon on August 8, although adjournment may occur earlier or later depending upon the time needed for the expert panel to complete its work. The expert panel will (1) continue its review, (2) finalize sections 1–4 of the draft report, (3) reach conclusions regarding whether exposure to bisphenol A is a hazard to human reproduction or development, and (4) write Section 5 Summary, Conclusions, and Critical Data Needs. The interim draft report will serve as the starting point for the expert panel's discussions at its August meeting.

Bisphenol A (CAS RN: 80–5–07) is a high production volume chemical used in the production of epoxy resins, polyester resins, polysulfone resins, polyacrylate resins, polycarbonate plastics, and flame retardants. Polycarbonate plastics are used in food and drink packaging; resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. Some polymers used in dental sealants and tooth coatings contain bisphenol A. Exposure to the general population can occur through direct contact to bisphenol A or by exposure to food or drink that has been in contact with a material containing bisphenol A. CERHR selected this chemical for evaluation because of (1) high production volume, (2) widespread human exposure, (3) evidence of reproductive toxicity in laboratory animal studies, and (4) public concern.

Request for Comments

The CERHR again invites written public comments on the interim draft expert panel report on bisphenol A. All

public comments received on the interim draft report will be posted on the CERHR Web site prior to the August meeting and distributed to all expert panel members for their consideration in revising the interim draft report and/or preparing for the second meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Shelby (see **ADDRESSES** above) for receipt by June 20, 2007.

Time will be set aside on August 6, 2007, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). Persons wishing to make oral remarks are asked to contact CERHR by July 30 (see **ADDRESSES** above) and, if possible, send a copy of the PowerPoint slides, statement, or talking points by July 30. When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail and sponsoring organization (if any). Any written statement will be provided to the expert panel members to assist them in identifying issues for discussion and noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on August 6, 2007, from 7:30–8:30 a.m. Persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Background Information on CERHR

NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **FOR FURTHER INFORMATION CONTACT** above). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. Information about the process and CERHR is available on the CERHR Web site under ''About CERHR'' or in printed copy from CERHR.

Dated: June 6, 2007.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–11590 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meetings of the Advisory Committee for Injury Prevention and Control (ACIPC), and Its Subcommittee, the Science and Program Review Subcommittee

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meetings of the aforementioned subcommittee and committee.

Name: Science and Program Review Subcommittee (SPRS).

Times and Date: 10:30 a.m.–10:45 a.m., July 12, 2007 (Open). 10:45 a.m.–2:45 p.m., July 12, 2007 (Closed).

Place: Koger Center, Yale Building, Room 1081, 2945 Flowers Road, South, Atlanta, GA 30341.

Purpose: The Science and Program Review Subcommittee provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC).

Matters To Be Discussed: The subcommittee will meet July 12, 2007, to provide a secondary review of, discuss, and evaluate the individual research grant and cooperative agreement applications submitted in response to two Fiscal Year 2007 Requests for Applications (RFAs) related to the following individual research announcements: 07002, Family and Dyadic Focused Interventions to Prevent Intimate Partner Violence; 07003, Maximizing Protective Factors for Youth Violence; 07004, Abusive Head Trauma Prevention; 07005, Understanding Bullying and Sexual Violence Perpetration and Factors Associated with Both Outcomes; 07006, Grants for Traumatic Injury Biomechanics Research; 07007, Dissemination Research on Fall Prevention: ''Stepping On'' in a U.S. Community Setting; and 07008, The Impact of Traumatic Brain Injury Among Incarcerated Persons. Following this meeting, the voting members of ACIPC will meet via teleconference to vote on the recommendations of the SPRS regarding the RFAs. This call will take place on July 12 from 3 p.m.–4:30 p.m.

Name: Advisory Committee for Injury Prevention and Control.

Times and Date: 3 p.m.–3:15 p.m., July 12, 2007 (Open). 3:15 p.m.–4:30 p.m., July 12, 2007 (Closed).

Place: Koger Center, Yale Building, Room 1081, 2945 Flowers Road, South, Atlanta, GA 30341.

Purpose: The committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Director, Centers for Disease Control and Prevention, and the Director, National Centers for Injury Prevention and Control regarding feasible goals for the prevention and control of injury. The committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters to be Discussed: Agenda items for the open portion include the call to order and introductions and request for public comments. Beginning at 3:15 p.m., July 12, 2007, through 4:30 p.m, during the closed portion, the Committee will vote on the results of the secondary review. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and (b), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC pursuant to Pub L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Amy Harris, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone (770) 488–4936.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 31, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–11555 Filed 6–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10117, 10118, 10119, 10135, 10136, 10214, and CMS–10216]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Applications: Medicare Advantage (MA) Application Coordinated Care Plans (CMS–10117), Medicare Advantage (MA) Application Private Fee-For-Service Plans (CMS–10118); Medicare Advantage (MA) Application Regional PPO Plans (CMS–10119); Medicare Advantage (MA) Application Service Area Expansion (SAE) for Coordinated Care Plans: Private Fee For Service Plans (CMS–10135); Medical Savings Account Plans (CMS–10136), and Employer Group Waiver Plans (CMS–10214); *Form Number:* CMS–10117, 10118, 10119, 10135, 10136 and 10214 (OMB#: 0938–0935); *Use:* An entity seeking a contract as an MA organization must be able to provide Medicare's basic benefits plus meet the organizational requirements set out under the regulations at 42 CFR Part 422. An applicant must demonstrate that it can meet the benefit and other requirements within the specific geographic area it is requesting. The application forms are designed to give CMS the information needed to determine a health plan's compliance with the regulations at 42 CFR Part 422. The MA application forms will be used by CMS to determine whether an entity is eligible to enter into a contract to provide services to Medicare beneficiaries; *Frequency:* Reporting—Once; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 220; *Total Annual Responses:* 220; *Total Annual Hours:* 5580.

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Alternative Benefits State Plan Amendment Health Opportunity Accounts (HOA) Demonstration Program; *Use:* The DRA provides States with numerous flexibilities in operating their State Medicaid programs. For example, Section 6082 of the DRA allows up to 10 States to operate Medicaid demonstrations to test alternative systems for delivering their Medicaid benefits. Under these demonstrations, States would have the flexibility to deliver their Medicaid benefits to volunteer beneficiaries through a program that is comprised of an HOA and a High Deductible Health Plan (HDHP). Under the DRA, States can submit a State Plan Pre-print to CMS to effectuate this change to their Medicaid programs. CMS will provide a State Medicaid Director letter providing guidance on this provision and the implementation of the DRA and the associated State Plan Amendment template for use by States to modify their Medicaid State Plans if they choose to implement this flexibility; *Form Number:* CMS–10216 (OMB#: 0938–1007); *Frequency:* Reporting: One-time; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 10.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: June 8, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–11467 Filed 6–14–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–216, CMS-R–262, CMS–10173, and CMS–R–308]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Issuance of Advisory Opinions Concerning Physicians' Referrals; *Use:* Section 1877(g)(6) of the Social Security Act (the Act), requires that the Department of Health and Human Services issue advisory opinions concerning whether the referral of a Medicare patient by a physician for certain designated health services (other than clinical laboratory services) is prohibited under the physician referral provisions of the Social Security Act. Section 1877(g)(6) of the Act requires that the Department of Health and Human Services accept

requests for advisory opinions made after November 3, 1997 and before August 21, 2000. Section 543 of the Benefits Improvement and Protection Act of 2001, Public Law 106–554, extended indefinitely the period during which the Department of Health and Human Services accepts requests for these advisory opinions. The collection of information contained in 42 CFR 411.372 and 411.373 is necessary to comply with this statutory mandate, and allow CMS to consider requests for advisory opinions and provide accurate and useful opinions. *Form Number:* CMS–R–216 (OMB#: 0938–0714); *Frequency:* Once; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 50 *Total Annual Responses:* 50; *Total Annual Hours:* 1,000.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* CMS requires that MA and PDP organizations submit a completed formulary and PBP as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. To see the comprehensive list of changes from CY2007 to CY2008, please refer to the document entitled ''Appendix B—PBP-Formulary CY2008 List of Changes.'' *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 450 *Total Annual Responses:* 4725; *Total Annual Hours:* 10,800.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Individuals Authorized Access to the CMS Computer Services (IACS); *Form Number:* CMS–10173 (OMB#: 0938–0989) *Use:* The Centers for Medicare and Medicaid Services (CMS) is requesting the Office of Management and Budget (OMB) approval of the Individuals Authorized to Customer Service Application for Access to CMS Computer Systems. The IACS system provides a centralized user provisioning and administration service that supports the creation, deletion, and lifecycle management of enterprise identities. This service creates accounts, supports Role Based Access Control (RBAC), the form flow approval process and enterprise identity audit and recertification, and provides business application integration points. An application integration point allows business application owners to use the form flow process of the user provisioning service to approve or deny requests for access to business applications. The primary purpose of this system is to implement a unified framework for managing user information and access rights, for those individuals who apply for and are granted access across multiple CMS systems and business contexts. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant; (2) support constituent requests made to a Congressional representative; and (3) to support litigation involving the Agency related to this system. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. *Frequency:* As required; *Affected Public:* Individuals or households; Business or other for-profit and not-for-profit; State, Local or Tribal governments; *Number of Respondents:* 60,000,000 *Total Annual Responses:* 15,000,000; *Total Annual Hours:* 15,000,000.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Children's Health Insurance Program and Supporting Regulations in 42 CFR 431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, and 457.1180; *Form Number:* CMS–R–308 (OMB#: 0938–0841) *Use:* States are required to submit title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. States are also required to submit State expenditure and statistical reports, annual reports and State evaluations to the Secretary as outlined in title XXI of the Social Security Act. *Frequency:* Yearly and quarterly; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,454,601; *Total Annual Hours:* 864,933.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on August 14, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 7, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–11468 Filed 6–14–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0220]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fee Cover Sheet, FDA Form 3546

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the hourly burden necessary to complete FDA Form 3546, ''Animal Drug User Fee Cover Sheet.''

DATES: Submit written or electronic comments on the collection of information by August 14, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets

Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fee Cover Sheet; FDA Form 3546; 21 U.S.C. 379j–12 (OMB Control Number 0910–0539)—Extension

Under Section 740 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–12), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), FDA has the authority to assess and collect for certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. The types of fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The cover sheet, FDA Form 3546, is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made, is appropriately linked to that payment. The form, when completed electronically, will result in the generation of a unique payment identification number used for tracking the payment. FDA will use the information collected to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received.

Respondents to this collection of information are new animal drug sponsors, applicants, or manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 U.S.C. 379j–12	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(a)(1) FDA Form 3546 (Cover Sheet)	69	1 time for each application	69	1	69

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

Based on FDA's database system, there are an estimated 140 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 2003. The Center for Veterinary Medicine estimates 69 annual responses that include the following: 28 new animal drug premarket approval applications and 41 supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 30 minutes to 1 hour. The hours per response are based on the average of these estimates.

Dated: June 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11527 Filed 6–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0050]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Label Comprehension Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number 0910–NEW and title ''Label Comprehension Study.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Label Comprehension Study (U.S.C. 393(d)(2)(C))

FDA issued the ''Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' on November 14, 2005 (70 FR 69156). Section 21 U.S.C. 393(d)(2)(C) of the Federal Food, Drug and Cosmetic Act (the act) states that the Secretary, through the Commissioner, shall be responsible to conduct research relating to * * * devices in carrying out this chapter. In order to evaluate the understandability of the condom labeling language currently on the market and the labeling language proposed in this draft guidance, as well as a future revised version of the labeling, FDA plans to evaluate readers' comprehension of three versions of condom labeling through a label comprehension study.

The proposed label comprehension study will measure current and potential condom consumers' understanding of the current market labeling and the proposed condom labeling in the draft guidance of the retail package, foil and package insert of condom labeling, as well as a future revised version of the labeling. The label comprehension study will follow a sequential design, first testing both the current market labeling (Part A) and the draft labeling in the guidance (Part B) in Stage 1, and then a revised version of the labeling in Stage 2.

FDA will conduct a label comprehension study via a mall intercept/central location intercept methodology with pre-screened participants. The FDA will administer a screening instrument, the Rapid Estimate of Adult Literacy in Medicine (REALM) test, an informed consent, and a questionnaire with approximately 20 questions related to the condom labeling language to a total of 1,200 participants: 400 participants for Part A of Stage 1, 400 participants for Part B of Stage 1, and 400 participants for Stage 2 of the study. Results of the study will be considered in FDA's condom labeling recommendations to provide important risk/benefit and use information associated with condoms in an easily understood language.

In the **Federal Register** of February 16, 2007 (72 FR 7661), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screening Tool	3,300	1	3,300	.05	165
Stage 1: Part A - REALM test; Informed Consent; Read Labeling; Questionnaire	400	1	400	.45	180
Stage 1: Part B - REALM test; Informed Consent; Read Labeling; Questionnaire	400	1	400	.45	180
Stage 2 - REALM test; Informed Consent; Read Labeling; Questionnaire	400	1	400	.45	180
Total					705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This was based on similar types of FDA studies conducted in the past. FDA has conducted both focus group studies and label comprehension studies, where similar participant activities, such as reading the labeling, taking the REALM test, signing the informed consent, and answering questions on a self-administered questionnaire took place. In order to achieve the 1,200 participants for the condom label comprehension study, FDA estimates screening 3,300 to achieve 1,200 interviews.

Dated: June 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11528 Filed 6–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub.

L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Revision

This is a request for revision of the Nursing Education Loan Repayment Program (NELRP) application and participant monitoring forms. The NELRP was originally authorized by 42 U.S.C. 297b(h) (section 836(h) of the Public Health Service Act) as amended by Public Law 100–607, November 4, 1988. The NELRP is currently authorized by 42 U.S.C. 297n (section 846 of the Public Health Service Act) as amended by Public Law 107–205, August 1, 2002.

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying educational loan balance as follows: 30 percent each year for the first 2 years and 25 percent for the third year. In exchange, the nurses agree to serve full-time as a registered nurse for 2 or 3 years at a health care facility with a critical shortage of nurses.

NELRP requires the following information:

1. Applicants must provide information on their nursing education, employment, and proposed service site;

2. Applicants must provide information on their outstanding nursing educational loans;

3. Applicants must provide banking information from their financial institution; and

4. Employers must provide information on the health care facility and on the employment status of applicants and participants.

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Estimates of Annualized Hour Burden are as Follows for Applicants:					
NELRP Application	5,000	1	5,000	1.5	7,500
Loan Verification Form	5,000	3	15,000	1	15,000
Applicant Employment Verification Form	5,000	1	5,000	.5	2,500
Payment Information Form	5,000	1	5,000	1	5,000
Application Checklist	5,000	1	5,000	.5	2,500
Pre-Award Confirmation Checklist	600	1	600	.25	150
Total	5,000	.....	35,600	.....	32,650
Estimates of Annualized Hour Burden are as Follows for Participants:					
Participant Semi-Annual Employment Verification Form	1,300	2	2,600	.5	1,300
Total	1,300	2	2,600	.5	1,300

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: June 11, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–11557 Filed 6–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission of Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before July 16, 2007.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau (HSB), HRSA, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Delia Jones, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, HSB, HRSA at (301) 443–6593 or e-mail: *djones2@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and

section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: (1) Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, and the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; (2) three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and (3) three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician who has expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines; (2) a member of the general public who is the legal representative of a child who has suffered a vaccine injury or death; and (3) an attorney whose specialty includes representation of persons who have suffered vaccine injuries or deaths. Nominees will be invited to serve a 3-year term beginning January 1, 2008, and ending December 31, 2010.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: June 11, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–11548 Filed 6–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the thirteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from on Tuesday, July 10, 2007, from 8:30 a.m. to approximately 5 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20001. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The meeting will focus primarily on the issue of gene patents and licensing practices and consist of a series of presentations and discussions involving international experts on how other countries are addressing questions related to the impact of gene patents and licensing practices on patient access to genetic tests. In addition, the SACGHS task force on oversight of genetic testing will present a brief report on the progress of its fact-finding and consultative efforts with regard to the Secretary's charge. The Committee will also be updated about the public comments received in response to the Committee's solicitation on its draft report on pharmacogenomics.

Time will be provided for public comments. The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health, and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: June 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2964 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine, 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 for the 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Training and Education.

Date: July 2–3, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; R03 Planning Grants for Collaborative CAM Research Development.

Date: July 2, 2007.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401 (Telephone Conference Call).

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: June 08, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2967 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 foth 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical and Health Services Research

Date: July 11, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Studies II.

Date: July 13, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Room 401, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–9096, *jeanetteh@mail.nih.gov.*

Dated: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2968 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Cooperative Agreemetns in Cardiovascular Research (U19).

Date: July 18, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattonh@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2972 Filed 6–14–07; 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; GWA Biorepository Review.

Date: July 23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

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*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Centers for Excellence in Ethical, Legal, and Social Implications Research (CEER) Review.

Date: July 30, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Rudy O. Pozzati, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2965 Filed 6–14–07; 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 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 General Medical Sciences Special Emphasis Panel; Institutional National Research Service Award.

Date: July 9, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, 3AN–18, Bethesda, MD 21716 (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MBRS Support of Competitive Research.

Date: July 12–13, 2007.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lisa Dunbar, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysical 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: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2961 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; EARDA.

Date: July 10, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864. Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2962 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR–B 02 S Conference Grants.

Date: July 12, 2007.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ruixia Zhou, PhD, Scientific Review Administrator, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov*.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR–D (O1) R Point of Care.

Date: July 13, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John K Hayes, PhD, Scientific Review Administrator, 6707 Democracy Blvd, Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2966 Filed 6–14–07; 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 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 Institutes of Neurological Disorders and Stroke Special Emphasis Panel; Fellowship Review.

Date: June 24–25, 2007.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Intercontinental Washington, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; K99 Review.

Date: July 2, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Intercontinental Washington, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog 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: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2969 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed 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 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 Environmental Health Sciences Special Emphasis Panel; Short Term Education Experiences for Research.

Date: July 11–13, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I-40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Branch, Division of Extramural Research & Training, National Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC, 27709, 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.893, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2971 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 f which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Autism Centers Review.

Date: July 10, 2007.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Disaster Mental Health Centers Review.

Date: July 26, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.821, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2973 Filed 6–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 12, 2007, 1 p.m. to July 12, 2007, 4 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on May 29, 2007, 72 FR 29524.

The meeting will be held on July 11, 2007 and the time has been changed to 1:30 p.m. to 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: June 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2974 Filed 6–14–07; 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; Immunology Fellowship and AREA.

Date: June 28–29, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 ONC–G (03)M: Antibody Engineering.

Date: July 2, 2007.

Time: 12 p.m. to 2 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: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuromechanisms of Pain.

Date: July 10–11, 2007.

Time: 9 a.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: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hypersensitivity, Autoimmune, and Immune-mediated Diseases.

Date: July 12–13, 2007.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; S10 Shared NMR and EPR Instrumentation.

Date: July 16–18, 2007.

Time: 7 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology.

Date: July 16–17, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular, Cellular and Developmental Neurobiological Small Business Applications.

Date: July 16, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Language and Communication.

Date: July 16, 2007.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Behtesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Members Conflicts in Emotion, Stress and Psychopathology.

Date: July 16, 2007.

Time: 3:30 p.m. to 5:30 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: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Predoctoral Diversity Fellowship Applications.

Date: July 17–18, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.

Date: July 17, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Betheda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery for CNS Disorders.

Date: July 17–19, 2007.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BGES Member Applications.

Date: July 17, 2007.

Time: 1 p.m. to 3 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: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Mass Spectrometry Shared Instrumentation Review Panel.

Date: July 18–19, 2007.

Time: 8 a.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: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Diversity Programs.

Date: July 18, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Cartier/Tiffany, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *abdelouahaba@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Animal Psychopharmacology.

Date: July 18, 2007.

Time: 3 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: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts for BMRD.

Date: July 18, 2007.

Time: 12 p.m. to 2 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: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroinformatics and Neuroimaging Special Emphasis Panel.

Date: July 19, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognition, Language and Perception Fellowship Study Section.

Date: July 20, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Contractility and Hypertrophy.

Date: July 20, 2007.

Time: 2:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hemostasis and Angiogenesis.

Date: July 20, 2007.

Time: 3:30 p.m. to 5:30 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: Robert S. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@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: June 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2970 Filed 6–14–07; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0046]

Science and Technology Directorate; Submission for Review; New Information Collection Request for Support of SBIR/STTR Company Registration Form, Research Topic Recommendation Form, Ask a Question Form, Collaboration Opportunity Form, Reviewer Opportunity Form, E-mail Mailing List Signup Form, E-mail Mailing List Removal Form, Proposal Coversheet Form, Cost Proposal Form

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites interested persons to comment on the following forms for the Small Business Innovation Research (SBIR) program: Company Registration (DHS FORM 10022), Research Topic Recommendation (DHS FORM 10018), Submit a Question (DHS FORM 10020), Collaboration Opportunity (DHS FORM 10021), Reviewer Opportunity (DHS FORM 10019), E-mail Mailing List Signup (DHS FORM 10016), E-mail Mailing List Removal (DHS FORM 10024), Proposal Coversheet (DHS FORM 10017), Cost Proposal (DHS FORM 10023) forms and instructions (hereinafter ''Forms Package'') designed to collect proposal information from small businesses through the SBIR 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 August 14, 2007.

ADDRESSES: You may submit comments, identified by docket number DHS–2007–0046, 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–2007–0046 in the subject line of the message.
- Mail: Science and Technology Directorate, ATTN: OCIO/Kenneth D. Rogers, 245 Murray Drive, Bldg. 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Kenneth D. 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.

The Department of Homeland Security (DHS) Small Business Innovation Research (SBIR) program established under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219) is responsible for collecting information used by the DHS SBIR/Small Business Technology Transfer (STTR) Program Office to: 1. Identify members of the public who qualify for, and are interested in participating in, the DHS SBIR/STTR Program; 2. Facilitate SBIR/STTR outreach to the public; 3. Provide the DHS SBIR/STTR Program Office necessary and sufficient information to determine that proposals submitted by the public to the DHS SBIR/STTR Program meet criteria for consideration under the program.

Please note that the Forms Package includes nine forms for collecting proposal information from small businesses. As explained herein, these separate forms are intended to reduce burden and improve records management by (1) allowing offerors to submit identifying information only once and then to reference that previously submitted identifying information in the submittal of proposals, (2) eliminating the cost and delay associated with the submission of proposals via non-electronic means, (3) facilitating timely review of proposals, and (4) improving the accuracy of records management for proposals. The Department is committed to improving its SBIR 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:* Company Registration Form, Research Topic Recommendation Form, Submit a Question Form, Collaboration Opportunity Form, Reviewer Opportunity Form, E-mail Mailing List Signup Form, E-mail Mailing List Removal Form, Proposal Coversheet Form, Cost Proposal Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Company Registration Form (DHS FORM 10022), Research Topic Recommendation Form (DHS FORM 10018), Submit a Question Form (DHS FORM 10020), Collaboration Opportunity Form (DHS FORM 10021), Reviewer Opportunity Form (DHS FORM 10019), E-mail Mailing List Signup Form (DHS FORM 10016), E-mail Mailing List Removal Form (DHS FORM 10024), Proposal Coversheet Form (DHS FORM 10017), Cost Proposal Form (DHS FORM 10023).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or other for-profit; the data collected through the SBIR Forms Package will be used to collect and review proposals from small businesses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Company Registration Form—400 respondents annually/15 minutes per respondent, Research Topic Recommendation Form—120 respondents annually/15 minutes per respondent, Ask a Question Form—150 respondents annually/10 minutes per respondent, Collaboration Opportunity Form—100 respondents annually/15 minutes per respondent, Reviewer Opportunity Form—100 respondents annually/15 minutes per respondent, E-mail Mailing List Signup Form—300 respondents annually/10 minutes per respondent, E-mail Mailing List Removal Form—180 respondents annually/10 minutes per respondent, Proposal Coversheet Form—460 respondents annually/30 minutes per

respondent, Cost Proposal Form—370 respondents annually/1 hour per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 885 burden hours.

Dated: June 7, 2007.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E7–11621 Filed 6–14–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 7, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07–2912 Filed 6–14–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5141–N–04]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public, which may participate by following the instructions below.

DATES: The conference call meeting will be held on Wednesday, July 25, 2007, from 11 a.m. to 2 p.m. eastern daylight time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can link onto the NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call, in the section marked ''Business'' ''Manufactured Housing Consensus Committee Information''. The link can be found at: *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm.*

Alternately, interested parties may contact Jill McGovern of NFPA at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of this conference call meeting is for the Committee to review and act on task group recommendations to implement changes in the bylaws concerning member terms and to discuss prospects for a new Committee chairperson.

Tentative Agenda

A. Roll Call
B. Welcome and opening remarks
C. Public testimony
D. Task group recommendations to implement changes in the bylaws concerning member terms
E. Full Committee meeting to take actions on task group recommendations
F. Full Committee meeting to discuss prospects for a new Committee chairperson
G. Adjournment

Dated: June 8, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–11533 Filed 6–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by July 16, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: The Charles Paddock Zoo, Atascadero, CA, PRT–142240

The applicant requests a permit to import two West African dwarf crocodiles (*Osteolaemus tetraspis tetraspis*) hatched in captivity from The Toronto Zoo, Ontario, Canada for the purpose of enhancement of the survival of the species.

Applicant: William A. Taggart, Hartland, WI, PRT–153970

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles D. Nicholas, III, San Antonio, TX, PRT–154917

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Marcus C. Hanen, Chester Springs, PA, PRT–155164

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Hubbs-SeaWorld Research Institute, Orlando, FL, PRT–134178.

The applicant requests a permit to conduct a comprehensive study of Florida manatee (*Trichechus manatus latirostris*) reproductive biology with up to 3 each captive held males and females for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Alvin E. Adams, Albany, GA, PRT–148507

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Milton Schultz, Jr., Glen Rose, TX, PRT–153560

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Jimmie R. Wells, Orleans, IN, PRT–153569

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Lloyd Douglas, Aledo, TX, PRT–154892

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: John A. Lally, Clarence Center, NY, PRT–154914

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Scott A. Hanan, Bloomington, IN, PRT–154919

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Eric K. Schnelle, Marble Falls, TX, PRT–152774

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Scott A. Huebner, Appleton, WI, PRT–154496

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: James L. Brogan, Athens, WV, PRT–154811

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Brain R. Busch, Chesterton, IN, PRT–154885

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Applicant: James E. Phares, Westville, IN, PRT–154886

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Edward P. Greer, Council Bluffs, IA, PRT–154900

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Kirk E. Winward, Salt Lake City, UT, PRT–154908

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Eric Rau, Union, MO, PRT–155077

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Paul Facchina, Newburg, MD, PRT–155060

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Tom L. Miranda, Englewood, FL, PRT–155087

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: May 25, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–11620 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14919–A, F–14919–A2; AK–964–1410–HY–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 Pitka's Point Native Corporation. The lands are in the vicinity of the Native village of Pitka's Point, Alaska, and are located in:

Seward Meridian, Alaska

T. 22 N., R. 77 W.,
Secs. 3, 4, and 10;
Secs. 11, 14, and 15;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing 9,216.10 acres.

T. 23 N., R. 77 W.,
Secs. 27 and 29;
Secs. 32 and 33.
Containing 1,272.57 acres.
Aggregating 10,488.67 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Pitka's Point Native Corporation. Notice of the decision will also be published four times in the Tundra Drums.

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 July 16, 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.

Kara Marciniec,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–11566 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1610–DQ]

Notice of Availability of Proposed Resource Management Plans and Associated Final Environmental Impact Statements for Three Bureau of Land Management Field Offices in Northeast California and Northwest Nevada: The Eagle Lake Field Office, the Alturas Field Office and the Surprise Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared three Proposed Resource Management Plans/Final Environmental Impact Statements (PRMPs/FEISs) for public lands managed by the Eagle Lake Field Office, Susanville, California; the Alturas Field Office, Alturas, California; and the Surprise Field Office, Cedarville, California. These plans are now available for public review.

DATES: BLM planning regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. Instructions for filing protests are described in the front cover of the Alturas, Eagle Lake, and Surprise PRMPs/FEISs and in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION, CONTACT: Jeff Fontana, Public Affairs Officer, Bureau of Land Management, 2950 Riverside Dr., Susanville, CA 96130, (503) 252–5332.

SUPPLEMENTARY INFORMATION: Copies of the Alturas, Eagle Lake, and Surprise PRMPs/FEISs have been sent to affected Federal, State, and local government agencies and to interested parties, and are available for public inspection at the BLM's Alturas Field Office, 708 West 12th Street, Alturas, California; the Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California; or the Surprise Field Office, 602 Cressler Street, Cedarville, California. Interested persons may also review the PRMPs/FEISs on the Internet at *http://www.blm.gov/ca/pa/planning/landuseplanning.html.*

Comments on the Draft RMPs/EISs received from the public were incorporated into the PRMPs/FEISs. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMPs/EISs may be found at 43 CFR 1610.5–2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

Please direct the follow-up letter to the appropriate address provided below.

The protest must contain:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the part or parts of the plan and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the State Director's decision is wrong.

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your protest. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director is the final decision of the Department of the Interior.

Dated: November 6, 2006.

Dayne Barron,

Eagle Lake Field Office Manager.

Editorial Note: This document was received at the Office of the Federal Register June 12, 2007.

[FR Doc. E7–11582 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–07–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on April 5, 2007:

The plat, in two sheets, representing the dependent resurvey of portions of the Original Walker River Indian Reservation Boundary, a portion of the subdivisional lines, and a portion of the subdivision-of-section lines of section 20 and the subdivision of certain sections, Township 15 North, Range 26 East, Mount Diablo Meridian, Nevada, executed under Group No. 830, was accepted April 3, 2007.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

2. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on April 12, 2007.

The plat, in two sheets, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the subdivision of sections 25, 26, 27 and 33, and metes-and-bounds surveys in sections 25, 28 and 33, Township 23 South, Range 61 East, Mount Diablo Meridian, Nevada, executed under Group No. 826, was accepted April 10, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines of Township 19 South, Range 62 East, Mount Diablo Meridian, Nevada, executed under Group No. 836, was accepted April 10, 2007.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on April 20, 2007.

The plat representing the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 3, Township 14 North, Range 19 East, Mount Diablo Meridian, Nevada, executed under Group No. 822, was accepted April 19, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines and portions of the subdivision-of-section lines of sections 6 and 18, Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada, executed under Group No. 823, was accepted April 19, 2007.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on May 4, 2007.

The plat, in three sheets, representing the dependent resurvey of the Fourth Standard Parallel North, through a portion of Range 31 East, portions of the south, east and west boundaries, and a portion of the subdivisional lines, and the subdivision of section 33, a metes-and-bounds survey through sections 14, 22, 23, 27, 28 and 33, and a metes-and-bounds survey in section 30, Township 20 North, Range 31 East, Mount Diablo Meridian, Nevada, executed under Group No. 831, was accepted April 30, 2007.

This survey was executed to meet certain administrative needs of the Fish and Wildlife Service.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on May 11, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 25, Township 14 South, Range 65 East, Mount Diablo Meridian, Nevada, executed under Group No. 829, was accepted May 10, 2007.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

6. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat representing the independent resurvey of a portion of the subdivisional lines, Township 14 South, Range 69 East, Mount Diablo Meridian, Nevada, executed under Group No. 789, was accepted June 5, 2007.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

7. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirement of applicable laws, and other segregations of record, these lands are open to application, petition and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plat of Survey described in paragraph 6, shall be considered as simultaneously filed at that time.

Applications received thereafter shall be considered in order of filing.

8. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 7, 2007.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E7–11585 Filed 6–14–07; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Proposed Addendum to Investigation No. 1205–6; Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Request for comments.

SUMMARY: The Commission requests comments with respect to the proposed modifications set forth at the end of this notice. The Commission is investigating the tariff treatment of certain products that appear to be subject to higher tariffs as a result of modifications recommended in investigation No. 1205–6 and implemented pursuant to Presidential Proclamation 8097. In addition, U.S. Customs and Border Protection (Customs) has requested certain changes in the Harmonized Tariff Schedule of the United States (HTS). Recommendations from this investigation will be included in an addendum to the original investigation report.

DATES:

June 29, 2007: Initial deadline for filing written submissions and comments.

July 6, 2007: Extended deadline for filing written submissions and comments.

August 20, 2007: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: David Beck, Director, Office of Tariff Affairs & Trade Agreements (O/TATA) (202 205–2603 or *david.beck@usitc.gov*); or Fred Schottman, Nomenclature Analyst, O/TATA, (202 205–2077 or *fred.schottman@usitc.gov*), U.S. International Trade Commission, Washington, DC 20436. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

BACKGROUND: The Commission issued an earlier version of this notice on May 31, 2007. The notice requested that persons with an interest in the matter file any written submissions by June 29, 2007. However, due to a technical difficulty, the notice was not published in the **Federal Register**. In view of the delay, the Commission has extended to the close of business, July 6, 2007, the due date for filing written submissions. Also, the Commission has corrected three errors in the discussion in subsection (c) regarding Chapter 82.

Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005) directs the Commission to periodically review the HTS and make recommendations on modifications to the HTS. The changes may be for purposes including: (a) Conformity to modifications made to the Harmonized System Convention (Convention) of the World Customs Organization (WCO), (b) promotion of uniform application of the Convention and, (c) alleviation of unnecessary administrative burdens. The recommended changes should ensure ''substantial rate neutrality'.

In April 2006, the Commission issued a report entitled Proposed Modifications to the Harmonized Tariff Schedule of the United States, investigation No. 1205–6, Publication No. 3851. The modifications recommended in the report were put into effect on February 3, 2007, pursuant to Presidential Proclamation 8097, which was published in the **Federal Register** on January 4, 2007. Annexes to Proclamation 8097 were published in USITC Publication No. 3898 (December 2006) and can be found on the USITC Web site (*http://www.usitc.gov*).

Written Submissions: No public hearing is planned in connection with these proposed modifications. However, parties are invited to submit written statements concerning the proposed modifications. All written submissions should be addressed to the Secretary and should be filed not later than 5:15 p.m., July 6, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf)*. Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission may include some or all of the CBI it receives in the final report it sends to the President. However, the Commission will not publish CBI in the public version of the final report in a manner that could reveal the operation of the firm supplying the information. The public version of the final report will be made available to the public on the Commission Web site.

Issued: June 12, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

BILLING CODE 7020–02–P

PROPOSED MODIFICATIONS

Section 1. Following implementation of the modifications set out in Presidential Proclamation 8097, it was recognized that certain products experienced higher rates of duty as a result of the modifications that went into effect February 3, 2007. The proposed modifications in Section 1 of this notice would be effective retroactively to February 3, 2007.

In order to restore the rate of duty previously applied to certain bamboo wooden flooring and to certain broadcast receivers, the Commission proposes to recommend that the HTS be amended as follows:

(a) Subheading 4412.10.00 would be superseded by the following:

	[Plywood, veneered panels and similar laminated...]			
"4412.10	Of bamboo:			
4412.10.05	Plywood	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%
4412.10.90	Other	Free		40%"

Subheading 4418.72.90 would be superseded by the following:

	[Builders' joinery and carpentry of wood,...]			
	[Assembled flooring panels:]			
	[Other, multilayer:]			
	"Other:			
"4418.72.91	Of unidirectional bamboo	Free		40%
4418.72.95	Other	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%"

(b) Subheadings 8527.99.20 and 8527.99.50 would be superseded by the following:

	[Reception apparatus for radiobroadcasting, ...]			
	[Other:]			
	[Other:]			
" 8527.99.15	Other radio receivers	3%	Free(A,AU,B,BH,C,CA, CL,E,IL,J,JO,MA, MX,P,SG)	35%
8527.99.40	Other	6%	Free (A,B,BH,C, CA,CL,E,IL,J,JO, MA,MX,P,SG) 1.5% (AU)	35%"

Section 2. Customs has notified the Commission of several parts of the HTS which it believes are not consistent with the HS Convention or cause unnecessary administrative burdens. Accordingly, the Commission proposes to recommend the following changes to the HTS, with the changes to be effective January 1, 2008.

CHAPTER 69

Additional U.S. Note 1 would be deleted, and Additional U.S. Notes 2 through 4 would be renumbered as 1 through 3, respectively.

Discussion: Additional U.S. Note 1 is more restrictive in defining "ceramic articles" than is Note 1 to the international Harmonized System (HS) Chapter 69. In the past, application of the U.S. Additional Note has forced Customs to issue rulings that were not consistent with uniform interpretation of the HS by our trading partners. Customs has therefore requested that the U.S. Additional Note be deleted.

CHAPTER 75

Heading 7506 would be deleted and superseded by the following:

"7506	Nickel plates, sheets, strip and foil:			
7506.10	Of nickel, not alloyed:			
7506.10.05	Not exceeding 0.15 mm in thickness	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	45%
	Other:			
7506.10.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	35%
7506.10.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	25%
7506.20	Of nickel alloys:			
7506.20.05	Not exceeding 0.15 mm in thickness	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	45%
	Other:			
7506.20.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	35%
7506.20.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	25%"

Discussion: Consistent with its interpretation of the Explanatory Notes of the WCO, Customs does not classify material thicker than 0.15 mm as "foil" in heading 7506. Therefore, existing subheadings

7506.10.60 and 7506.20.60 are empty provisions and the proposed structure clarifies classification in the heading.

CHAPTER 82

(a) Additional U.S. Note 3 would be modified by deleting "8205, 8211" and inserting "8205, 8206, 8211" in lieu thereof.

Discussion: Additional U.S. Note 3 provides instruction for comparing rates of duty for the determination of the rate applicable to sets; the instruction is applicable to sets in heading 8206, as well as sets in the headings now listed in the Note.

(b) Subheadings 8205.59.40 through 8205.59.80 would be deleted and superseded by the following:

	[Handtools (including glass cutters)...:]			
	[Other handtools (including ...:]			
	[Other:]			
	[Other:]			
	"Of iron or steel:			
8205.59.45	Caulking guns	5.3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%
8205.59.55	Other	5.3%	Free (A,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG) 1.3% (AU)	40%
8205.59.60	Of copper	Free		40%
8205.59.70	Of aluminum	1.5¢/g + 3.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	19¢/kg + 40%
8205.59.80	Other	3.7%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%"

Discussion: "Tools of a kind used in agriculture, horticulture or forestry" are provided for in heading 8201. Therefore, existing subheading 8205.59.40 is empty. The proposed changes delete that subheading and make conforming changes.

(c) The superior text to subheading 8214.20.60 would be replaced by the following:

"Manicure and pedicure sets, and combinations thereof:"

Discussion: Although the article description for subheading 8214.20 provides for manicure or pedicure sets, the existing language for the following eight-digit subheading restricts the scope to sets "in leather cases or other containers of types ordinarily sold therewith in retail sales". Customs has found the provision difficult to administer because of the uncertain meaning of "other containers" in this context. The proposed change makes clear that sets, other than those in leather containers, are classified in 8214.20.90.

[FR Doc. 07–2957 Filed 6–14–07; 8:45 am]
BILLING CODE 7020–02–C

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–NEW]

Solicitation for Grant Applications (SGA) 07–09; National Technical Assistance Center on Transition and Employment for Youth With Disabilities

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice of correction.

SUMMARY: Solicitation for Grant Applications (SGA) 07–09; National Technical Assistance Center on Transition and Employment for Youth with Disabilities; Notice of Correction.

1. *Subject:* National Technical Assistance Center on Transition and Employment for Youth with Disabilities; Solicitation for Cooperative Agreement.

2. *Purpose:* The Office of Disability Employment Policy (ODEP) announced a competition to fund a cooperative agreement to establish the National Technical Assistance Center on Transition and Employment for Youth with Disabilities within a 24-month period of performance. This solicitation was previously published in the **Federal Register** (72 FR 26836) on May 11, 2007. ODEP has since determined that $150,000 should be added to the total amount being awarded; accordingly, this document serves as notification that up to $1,850,000 is now available to fund this cooperative agreement.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Dates:* Applications must be mailed, hand-delivered or electronically sent to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Mitchell, Reference SGA 07–09, Room S–4307, 200 Constitution Avenue, NW., Washington, DC 20210. Applications sent by e-mail or telefascimile (FAX) will not be accepted. The closing date for receipt of applications is June 25, 2007. All applications, including those hand-delivered, must be received not later than 4:45 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Any questions regarding this SGA prior to the closing deadline, should be directed to Cassandra Mitchell, Procurement Services Center, e-mail address: *Mitchell.cassandra@dol.gov* or at telephone (202) 693–4570 (note that this is not a toll-free number). To obtain further information about the Office of Disability Employment Policy of the U.S. Department of Labor, visit the DOL Web site of the Office of Disability Employment Policy at *http://www.dol.gov/odep.*

Signed at Washington, DC, this 12th day of June, 2007.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. E7–11562 Filed 6–14–07; 8:45 am]

BILLING CODE 4510–FK–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2007–5]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of filings, request for comments.

SUMMARY: The Copyright Office is publishing a final list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attests that the station qualifies as a specialty station in accordance with the Federal Communications Commission's (FCC) definition of specialty station in effect on June 24, 1981. Any party may file an objection to an owner's claim of specialty station status with the Copyright Office.

DATES: Comments must be received on or before July 16, 2007. The effective date of the annotated list will coincide with the beginning of the accounting period that starts after the publication of the final list in the **Federal Register**.

ADDRESSES: If hand delivered by a private party, the sworn affidavit should be brought to Room 401 of the James Madison Building between 8:30 a.m. and 5 p.m. The material 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, the sworn affidavit must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, D.C. 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), the sworn affidavit should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Acting General Counsel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license, section 111 of title 17, United States Code, a cable operator may carry the signal of a television station classified as a specialty station at the base rate rather than at the higher 3.75% rate that is incurred for the carriage of a non–permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the Federal Communications Commission (FCC) which defined a specialty station as ''a commercial television broadcast station that generally carries foreign–language, religious, and/or automated programming in one–third of the hours of an average broadcast week and one–third of the weekly prime–time hours.'' 47 CFR 76.5(kk) (1981). The FCC no longer determines whether a station qualifies as a specialty station; however, the Copyright Office updates the list periodically, because the list remains relevant to the cable statutory license scheme.

The Copyright Office published its first specialty station list in 1990 under a procedure which allowed the licensee of the station to file an affidavit with the Office attesting to the fact that the station's

programming comports with the 1981 FCC definition and hence, qualifies it as a specialty station. At the same time, the Office also announced its intention to regularly update the list. 55 FR 40021 (October 1, 1990). The Office's second list was published in 1995. 60 FR 34303 (June 30, 1995). Its third list was published in 1998. 63 FR 67703 (December 8, 1998).

On February 8, 2007, the Copyright Office published a notice asking the licensee, or a valid agent of the licensee, to file a sworn affidavit with the Copyright Office stating that the station's programming satisfies the FCC's former requirements for specialty station status. 72 FR 6008 (February 8, 2007). In response to the notice, the Copyright Office received affidavits on

behalf of sixty–one broadcast television stations. These stations are listed below. Any party that objects to another party's claim to specialty station status should submit specific and factual comments as to which station(s) he or she objects to, and why. A final annotated list of specialty stations including references to any objections filed against a particular station licensee's claim will be published in the **Federal Register**.

Copyright Office licensing examiners shall refer to the final annotated list in examining a statement of account where a cable system operator claims specialty station status for a particular station. If a cable system operator claims specialty station status for a station not on the published final list, the examiner determines whether the owner of the station has filed an affidavit since publication of the list. Affidavits received after publication of the final annotated list shall be kept on file in the Licensing Division of the Copyright Office. Any interested party may file an objection to any such late–filed affidavit and the objection shall be filed together with the corresponding affidavit.

List of Specialty Stations: Call Letter and Cities of License

KBLN, Grants Pass, OR
KAKW, Kileen, TX
KTFO–CA, Austin, TX
KDTV(TV), San Francisco, CA
KDTV–CA, Santa Rosa, CA
KFTV(TV), Hanford, CA
KMEX–TV, Los Angeles, CA
KNIC–TV, Blanco, TX
KTVW–TV, Phoenix, AZ
KTVW–CA, Flagstaff, AZ
KUTH(TV), Provo, UT
KUVE–TV, Green Valley, AZ
KUVE–CA, Tuscon, AZ
KUVN–TV, Garland, TX
KUVN–CA, Fort Worth, TX
KUVS–TV, Modesto, CA
KWEX–TV, San Antonio, TX
KXLN–TV, Rosenberg, TX
WGBO–TV, Joliet, IL
WFDC–TV, Arlington, VA
WLTV(TV), Miami, FL
WHQS–TV, Cleveland, OH
WUVG–TV, Athens, GA
WTNC–LP, Durham, NC
WUVC–TV, Fayetteville, NC
WUVP–TV, Vineland, NJ
WXTV(TV), Paterson, NJ
K48GX, Tuscon, AZ
KABE–LP, Bakersfield, CA
KFPH–TV, Flagstaff, AZ
KFPH–CA, Phoenix, AZ
KFSF–TV, Vallejo, CA
KFTH–TV, Alvin, TX
KFTR–TV, Ontatio, CA
KFTU–TV, Douglas, AZ
KFTU–CA, Tuscon, AZ
KSTR–TV, Irving, TX
KTFD–TV, Boulder, CO
KTFF–TV, Portersville, CA
KTFF–LP, Fresno, CA
KTFK–TV, Stockton, CA
KTFQ–TV, Albuquerque, NM
WAMI–TV, Hollywood, FL
WFTT–TV, Tampa, FL
WFTY–TV, Smithtown, NY
WFUT–TV, Newark, NJ
WOTF–TV, Melbourne, FL
WUTF–TV, Marlborough, MA
WXFT–TV, Aurora, IL
WLII(TV), Caguas, Puerto Rico
WSUR–TV Ponce, Puerto Rico
KBTF–CA, Bakersfield, CA
KFTO–CA, San Antonio, TX
KNIC–CA, San Antonio, TX
KTFB–CA, Bakersfield, CA
WFPA–CA, Philadelphia, PA
K21GC, Safford, AZ
K45DX, Floresville, TX
KZOL–LP, Safford, AZ
K16FB, Globe, AZ
KDOS–LP, Globe, AZ

Dated: June 8, 2007

Tanya M. Sandros,

Acting General Counsel.

[FR Doc. E7–11595 Filed 6–14–07; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Moorea Coral Reef Ecosystems LTER Site Review (#10752).

Date & Time: July 8, 2007: 8 a.m.–12 p.m. July 9, 2007: 8:30 a.m.–7 p.m. July 10, 2007: 8 a.m.–6 p.m.

Place: The University of California's Gump Laboratory, Moorea, French Polynesia.

Type of Meeting: Partially closed.

For Further Information Contact: Dr. Henry Gholz, Division of Environmental Biology, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 292–8481.

Purpose of Meeting: Formal third-year review of the Moorea Coral Reef Ecosystems Long-Term Ecological Research project.

Agenda

Sunday 8 July 2007

8–12 NSF Briefing of the Review Team at Hotel (closed).

Monday 9 July 2007 (at Gump Research Station)

Project Introduction (open)
8:30–9 MCR Overview and Evolution/ Partnerships
Research Presentations (talks 15 min + questions 5 min) (open)
9:15–11:50 Overview
12:10–12:50 Lunch at Station
Field Trip 1–4:45 (closed)
Reception and Student Posters 5–6:45 (open)
Dinner locally 7:00 (open)
Review team separate working dinner (closed)

Tuesday 10 July 2007

8:00–8:30 Review Team assemble at Gump Lab
8:30–9:10 Research and other presentations (open)
Education and Outreach (15 + 5) (open)
9:30–10:10 Discussion (open)
10:30 Break
Information Management (15+ 5) (open)
10:45–11:30 Discussion (open)
12:00–12:50 Lunch at Station: Meet with Graduate Students (open)
1–4:15 Review Team Report Work Session (closed)
4:30–5:55 Report-out by Review Team (closed)
6:00 Adjourn

Reason for Closing: During closed sessions the review will include information of a confidential nature, including technical and financial information. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: June 12, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–11556 Filed 6–14–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08526]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. SUC–1275, for Termination of the NRC License and Unrestricted Release of the Seneca Army Depot Activity Facility in Romulus, New York

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Telephone: (610) 337–5040; fax number: (610) 337–5269; e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SUC–1275. This license is held by the Department of the Army, Seneca Army Depot Activity (the Licensee) for its Seneca Army Depot located in Romulus, New York (the Facility). Issuance of this amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The licensee requested this action in a letter dated June 15, 2004.

The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's June 15, 2004, license amendment request, resulting in the termination of its NRC materials license and release of the Facility for unrestricted use. License No. SUC–1275 was issued on September 3, 1976, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use depleted uranium (DU) for purposes of handling, on-site transportation, inspection, storage and demilitarization of DU cartridges. As a Depot, this facility also stored military commodities authorized under License Nos. SUC–1380, SUB–834, and 45–16023–01NA, most of which was in the form DU commodities. One location was used for storage of uranium and thorium ores authorized by License No. STC–133, and that location was decommissioned in 1993. Records also indicate that promethium-147 microspheres in military equipment, authorized by License No. 12–00722–07, were also stored in one location at the Facility.

The Facility is situated on 10,587 acres and consists of ammunition bunkers called ''igloos'', warehouses, and support buildings located in a sparsely populated farmland area. Within the Facility, use of licensed materials was confined to five buildings, one warehouse, and 121 ammunition bunkers.

In September 1999, the Licensee ceased licensed activities and initiated preliminary decommissioning activities. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. However, because the possession and use of DU had been authorized by its license, the Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for its Facility. The proposed DCGLs were submitted in their License Termination Plan dated February 11, 2003. After the NRC approved the License Termination Plan in 2003, the license was amended to authorize decommissioning activities only. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it met the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination in a Termination Report dated June 15, 2004. A confirmatory survey was performed by Oak Ridge Institute for Science and Education (ORISE) in October 2006, to verify the radiological status of the Facility.

Need for the Proposed Action

The Licensee ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Depleted uranium (DU) and promethium-147 (Pr-147). Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted final status surveys from July through September 2002. The final status survey report was attached to the Licensee's amendment request dated June 15, 2004. The Licensee developed site-specific DCGL's to demonstrate compliance with the radiological criteria for unrestricted release, using a release criteria of 10 millirem per year, which is below the 25 millirem per year limit in 10 CFR 20.1402. The Licensee conducted site-specific dose modeling using input parameters specific to the Facility, using the RESRAD code resident farmer scenario and the RESRAD-Build building occupancy scenario. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials, and soils that will satisfy the NRC requirements in subpart E of 10 CFR Part 20 for unrestricted release. The NRC previously reviewed the Licensee's methodology and proposed DCGLs, and concluded that the proposed DCGLs were acceptable for use as release criteria at the Facility. The Licensee's final status survey results were below these DCGLs, and are thus acceptable.

The NRC contracted with ORISE which conducted confirmatory scanning and dose rate surveys from October 30 to November 2, 2006. None of the confirmatory survey results exceeded the DCGLs established for the Facility. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 [ML042310492, ML042320379, and ML042330385]. The Licensee also considered and appropriately accounted for the dose contribution from previous site releases. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402, including the impact of residual radioactivity at previously-released site locations of use. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d), requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action complies with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the New York State Department of Environmental Conservation for review on April 3, 2007. On May 2, 2007, New York State Department of Environmental Conservation responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Inspection records and Licensing documentation for License SUC–1275 with amendments;
6. Letter dated February 11, 2003, with the Seneca Army Depot Activity License Termination and License Release Plan dated February 11, 2003 [ML030450373];
7. Letters dated April 3, 2003 [ML031010534], September 2, 2004 [ML042540117] and January 28, 2005 [ML050320064];
8. Letter dated June 15, 2004, requesting termination [ML041810284] with NRC License Termination Report for Seneca Army Depot Activity, Romulus, New York, dated June 30, 2004 [ML041810290 and ML041810294];
9. Letter dated February 28, 2005 [ML050970152] with Summary Tables [ML051050173], Retrospective Power Curves [ML051050181, ML051050183, ML051050184, ML051050185, ML051050188, ML051050191, ML051050195, ML051050197, ML051050203, and ML051050205], and Supplementary Information Spreadsheets [ML051050208, ML051050215, ML051050217, ML051050218, ML051050219, ML051050220, ML051050231, ML051050253, ML051050255, ML051050305, ML051050307, ML051050313, ML051050315, ML051050317, ML051050318, ML051050320, ML051050321, ML051050322, ML051050324, ML051050325, ML051050327, ML051050329, ML051050331, ML051050332, ML051050334, ML051050335, ML051050339, ML051050343, ML051050344, ML051050346, ML051050347, ML051050360, ML051050362, ML051050363, ML051050364, ML051050366, ML051050367, ML051050370, ML051050373, ML051050375, ML051050376, ML051050378, ML051050379, ML051050381, ML051050382, ML051050386, ML051050388, ML051050391, ML051050394, ML051050396, ML051050398, ML051050399, ML051050401, ML051050402, ML051050405, ML051050407, ML051050408, ML051050409, ML051050410, ML051050439, ML051050443, ML051050445, ML051050446, ML051050451, ML051050452, ML051050453, ML051050454, ML051050457, ML051050459, ML051050460, ML051050462, ML051050464, ML051050465, ML051050466, ML051050468, ML051050478, ML051050479, ML051050511, ML051050512, ML051050513, ML051050516, ML051050517, ML051050519, ML051050537, ML051050541, ML051050542, ML051050544, ML051050545, ML051050546, ML051050547, ML051050551, ML051050553, ML051050555, ML051050557, ML051050559, ML051050561, ML051050563, ML051050564, ML051050565, ML051080165, ML051080166, ML051080171, ML051080175, ML051080177, ML051080179, ML051080181, ML051080196, ML051080197, ML051080198, ML051080212, ML051080227, ML051080229, ML051080230, ML051080239, ML051080240, ML051080242, ML051080243, ML051080244, ML051080245, ML051080247, ML051080248, ML051080249, ML051080252, ML051080253, ML051080254, ML051080255, ML051080256, ML051080257, ML051080259, ML051080260, ML051080261, ML051080263, ML051080265, ML051080268, ML051080271, ML051080273, ML051080278, ML051080280, ML051080282,

ML051080284, ML051080286, ML051080287, ML051080290, ML051080293, ML051080296, ML051080297, ML051080299, ML051080300, ML051080301, ML051080303, ML051080305, ML051080306, ML051080309, ML051080319, ML051080321, ML051080323, ML051080325, ML051080327, ML051080332, ML051080335, ML051080337, ML051080338, ML051080342, ML051080343, ML051080345, ML051080346, ML051080350, ML051080352, ML051080355, ML051080356, ML051080358, ML051080359, ML051080360, ML051080361, ML051080363, ML051080365, ML051080367, ML051080369, ML051080370, ML051080372, ML051080374, ML051080394, ML051080403, ML051080404, ML051080405, and ML051080408];

10. Letter dated October 5, 2005 [ML070300192];

11. Letter dated November 29, 2005 [ML053470250] with Addendum A, Data Evaluation Using the Scenario A Null Hypothesis, dated November 30, 2005 [ML053470337];

12. Oak Ridge Institute for Science and Education (ORISE), Proposed Confirmatory Survey Plan for the Seneca Army Depot Activity (SEDA), Romulus, New York, dated October 27, 2006 [ML070300233]; and

13. ORISE letter dated March 13, 2007 [ML070790088] with ORISE Confirmatory Survey Results for the Seneca Army Depot Activity (SEDA), Romulus, New York, Final Report, February 2007 [ML070790054];

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, PA, this day of June 8th, 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E7–11570 Filed 6–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–07–154; Docket No.: 52–006]

In the Matter of Westinghouse Electric Company LLC and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

Westinghouse Electric Company, LLC (WEC), holds certificates for the AP600 and AP1000 reactor designs issued by the U.S. Nuclear Regulatory Commission (NRC) in accordance with the Atomic Energy Act (AEA) of 1954, as amended.

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of an aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the beyond design basis, large commercial aircraft characteristics specified by the Commission to plant designers who have the need to know and who meet the NRC's requirements for the disclosure of such information. The specified aircraft characteristics that are the subject of this order are hereby designated as Safeguards Information (SGI),[1] in accordance with Section 147 of the AEA. In addition, in a letter dated May 17, 2007, WEC requested authorization to have independent control of SGI. To implement the Commission's decision to provide this SGI to WEC, and in response to WEC's May 17 letter, the NRC is issuing this order to WEC to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history records check requirements for access to SGI were immediately effective upon enactment of the EPAct. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that Westinghouse can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21 and imposes requirements for access to and protection of SGI by any person,[2] whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

In order to implement this Order, WEC must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as the ''reviewing official,'' must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by WEC as having a need-to-know SGI, and who have been fingerprinted and have had a criminal history records check in accordance with this Order. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if a WEC wishes to have a new or additional reviewing official, the NRC must approve that

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

individual before they can act in the capacity of a reviewing official.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59. Those individuals include: Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or Congressional Committees who have undergone fingerprinting for a prior U.S. government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks, thus, have satisfied the EPAct fingerprinting requirement.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, as discussed above, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know.

To provide assurance that WEC is implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, WEC shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 73, it is hereby ordered, effective immediately, that WEC and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in the latter two (2) cases that the appropriate documentation is made available to WEC's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. WEC shall comply with the following requirements:

1. WEC shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the Attachment to this Order.

2. WEC shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who: (a) WEC nominates as the ''reviewing official'' for determining access to SGI by other individuals; and (b) has an established need-to-know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as WEC's reviewing official.[3] WEC may, at the same time or later, submit the fingerprints of other individuals to whom WEC seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. WEC may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. WEC shall make determinations on continued access to SGI within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. WEC shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide WEC's justification for seeking relief from, or variation of, any specific requirement.

WEC's responses to C.1., C.2., C.3, and C.4, above shall be submitted to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, WEC responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by WEC.

IV

In accordance with 10 CFR 2.202, WEC must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to 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 New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. 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 by

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

which WEC or other entities adversely affected rely, 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, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to WEC, if the answer or hearing request is by an entity other than WEC. Because of possible 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 via 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 via e-mail to *OGCMailCenter@nrc.gov.* If an entity other than WEC requests a hearing, that entity shall set forth, with particularity, the manner in which their interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by WEC, 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), WEC 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 as specified above in Section III, 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, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received.

An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

Dated this 8th day of June 2007.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of New Reactors.

Attachment—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When a Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees and other persons who are required to conduct fingerprinting shall comply with the requirements of this attachment.[4]

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements included in Attachment 2 to this Order, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of

[4] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting in accordance with these requirements.

fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Guidance for Evaluation of Access to Safeguards Information With the Inclusion of Criminal History Records (Fingerprint) Checks

When a licensee or other person [5] submits fingerprints to the Nuclear Regulatory Commission (NRC) pursuant to an NRC Order, it will receive a criminal history summary of information, provided in federal records, since the individual's eighteenth birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Enclosure 3. The licensee will receive the information from the criminal history records check for those individuals requiring access to Safeguards Information (SGI), and the reviewing official will evaluate that information using the guidance below. Furthermore, the requirements of all Orders, which apply to the information and material to which access is being granted, must be met.

The licensee's reviewing official is required to evaluate all pertinent and available information in making a determination of access to SGI, including the criminal history information pertaining to the individual as required by the NRC Order. The criminal history records check is used when determining whether an individual has a record of criminal activity that indicates that the individual should not have access to SGI. Each determination of access to SGI, which includes a review of criminal history information, must be

[5] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

documented to include the basis for the decision that is made.

(i) If negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information should be considered, and decisions made based on these findings, must be documented.

(ii) Any record containing a pattern of behaviors which indicates that the behaviors could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have access to SGI, should be carefully evaluated prior to any authorization of access to SGI.

It is necessary for a licensee to resubmit fingerprints only under two conditions:

(1) The FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions; or

(2) The initial submission has been lost.

If the FBI advises that six sets of fingerprints are unclassifiable based on conditions other than poor quality, the licensee may submit a request to the NRC for alternatives. When those search results are received from the FBI, no further search is necessary.

Process To Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process for individuals whom the Nuclear Regulatory Commission (NRC) licensees or other persons [6] nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person, nor shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

2. Applicability

This policy applies solely to those employees of licensees who are nominated as a reviewing official, and who are thus considered, by the NRC, for initial or continued access to SGI in that position.

3. SGI Access Determination Criteria

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

4. Procedures To Challenge the Contents of Records Obtained From the FBI

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI will forward the challenge to the agency that submitted the data and request that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency.

(ii) Be afforded ten (10) days to initiate an action challenging the results of an FBI criminal history records check (described in (I), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures To Provide Additional Information

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures To Notify an Individual of the NRC Facilities Security Branch Chief Determination To Deny or Revoke Access to SGI

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures To Appeal an NRC Determination To Deny or Revoke Access to SGI.

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within twenty (20) days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within sixty (60) days after receipt of the appeal.

8. Procedures To Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal

a. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing, and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities

[6] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

[FR Doc. E7–11574 Filed 6–14–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Procedures for Implementing Multiemployer Plan Elections

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a collection of information under its procedures on multiemployer plan elections. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 16, 2007.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

Copies of the request for approval (including the procedures) may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address, visiting the Disclosure Division, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The Disclosure Division will e-mail, fax, or mail the request to you, as you request.

FOR FURTHER INFORMATION CONTACT: Constance Markakis, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4000, ext. 6779. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4000, ext. 6779.)

SUPPLEMENTARY INFORMATION: Section 1106 of the Pension Protection Act of 2006 (Pub. L. 109–280) (''PPA 2006''), as modified by Public Law 110–028, amends the definition of a ''multiemployer plan'' in Title I of ERISA and the Internal Revenue Code of 1986 to allow certain plans to elect to be multiemployer plans pursuant to procedures prescribed by PBGC.

A plan is eligible for the election if it is (1) a plan revoking a previous election to remain a single-employer plan under section 3(37)(E) of ERISA, or (2) a plan with respect to which substantially all employer contributions were made by tax-exempt employers. In either case, for three prior plan years, the plan must have been a plan to which more than one employer was required to contribute that was maintained pursuant to one or more collective bargaining agreements. PPA 2006 also imposes other requirements for an election, and provides certain exemptions from the requirements. All elections must be made by August 17, 2007.

PBGC procedures for implementing these multiemployer plan elections require a plan to submit specified information to PBGC to demonstrate that it meets the statutory eligibility requirements. On April 13, 2007 (72 FR 18692), PBGC published a notice informing the public that it intended to request OMB approval of the procedures and soliciting public comment. PBGC received four comments on the procedures (posted on PBGC's Web site at *http://www.pbgc.gov/docs/ppa1106.pdf*). PBGC has revised the procedures, taking into account these comments and the statutory changes in Public Law 110–028.

The PBGC is requesting that OMB approve this collection of information for three years. (Although plans must make an election by August 17, 2007, PBGC may request additional information, after that date, that is needed to review the election.) 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 PBGC estimates that approximately 35 plans will respond to this collection of information. The PBGC further estimates that the average burden of this collection of information will be 2.5 hours and $1,875 per plan, with an average total burden of 87.5 hours and $65,625.

Issued in Washington, DC, this 13th day of June, 2007.

John H. Hanley,

Director, Legislative and Regulatory Department Pension Benefit Guaranty Corporation.

[FR Doc. E7–11691 Filed 6–14–07; 8:45 am]

BILLING CODE 7709–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 2007. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the

''applicable percentage'' of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year'').

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the ''applicable percentage'' to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 2007 is 6.01 percent (i.e., 100 percent of the 6.01 percent composite corporate bond rate for May 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 2006 and June 2007.

For premium payment years beginning in:	The required interest rate is:
July 2006	5.36
August 2006	5.36
September 2006	5.19
October 2006	5.06
November 2006	5.05
December 2006	4.90
January 2007	5.75
February 2007	5.89
March 2007	5.85
April 2007	5.84
May 2007	5.98
June 2007	6.01

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 2007 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of June 2007.

John H. Hanley,

Director, Legislative and Regulatory Department Pension Benefit Guaranty Corporation.

[FR Doc. E7–11560 Filed 6–14–07; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2007–1; Order No. 19]

Notice and Order

AGENCY: Postal Regulatory Commission.

ACTION: Notice of field hearings.

SUMMARY: Recent legislation alters the postal ratemaking process, and tasks the Postal Regulatory Commission to develop regulations to implement this process. This notice informs the public of field hearings that will be held to guide this process.

DATES: 1. June 22, 2007: field hearing, Kansas City, MO (10 a.m.).

2. June 28, 2007: field hearing, Los Angeles, CA.

3. July 9, 2007: field hearing, Wilmington, DE.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Fisher, chief of staff, 202–789–6820 and *ann.fisher@prc.gov*, or Judy Grady, special assistant to the Chairman, 202–789–6898 and *judith.grady@prc.gov* (logistics).

SUPPLEMENTARY INFORMATION:

Regulatory History

1. 72 FR 5230 (February 5, 2007).
2. 72 FR 29284 (May 25, 2007).

I. Introduction

The Postal Accountability and Enhancement Act (PAEA) was enacted December 20, 2006.[1] The new law replaces the approach that has guided postal ratemaking and classification since 1970 with a comprehensive new framework. It charges the Postal Regulatory Commission (Commission) with developing a modern system of rate regulation to implement the new framework. To facilitate fulfilling this mandate, the Commission has established Docket No. RM2007–1 to receive written comments on the type and nature of rules needed to effectuate the transition to the new system.

As part of this rulemaking docket, the Commission has invited mail users from a broad cross-section of the mailing community to testify at several public hearings in locations outside of Washington, DC. At this time, the following dates and locations have been identified: June 22, 2007 in Kansas City, Missouri; June 28, 2007 in Los Angeles, California; and July 9, 2007 in Wilmington, Delaware. Further details on the Kansas City hearing are provided in this notice; any changes related to that hearing and further details concerning the other field hearings will be posted on the Commission's Web site, *http://www.prc.gov*.

II. Information Applicable to All Field Hearings

Format and record. The Commission has issued invitations to testify based largely on geographic location, the development of a full and complete record, and the need to meet statutory deadlines for issuing implementing regulations. Others who wish to submit comments or testimony may do so via the Commission's electronic filing system. All comments and testimony received, including responses to questions from Commissioners, will be transcribed, posted on the Commission's Web site, and used to inform the Commission's decisions. The public is invited to attend the hearings.

Special accommodations. It is the Commission's understanding that each hearing room is handicapped accessible. Any member of the public who believes his or her attendance may require special accommodations is requested to contact Ann Fisher, chief of staff of the Postal Regulatory Commission, at 202–789–6803 or *ann.fisher@prc.gov*, as soon as possible.

III. Kansas City, Missouri Hearing

The Kansas City field hearing will be held Friday, June 22, 2007 in Council Chambers, City Hall (26th Floor), 414 E. 12th Street, Kansas City, Missouri 64106. The hearing is scheduled to begin at 10 a.m. and conclude by 12 noon. Scheduled witnesses include: Donald J. Hall, Jr., Vice Chairman, President and Chief Executive Officer, Hallmark Cards, Inc.; David Berry, Vice President, Community Publications Inc.; Mury L. Salls, Senior Vice President, DST Mailing Services; William S. Berkley, President and Chief Executive Officer, Tension Envelope Corporation; and Randy Stumbo, Director of Distribution and Postal Affairs, Meredith Corporation.

Ordering Paragraphs

It is ordered:

1. The Commission will hold hearings in Kansas City, Missouri on June 22,

[1] Public Law 109–435.

2007; Los Angeles, California on June 28, 2007; and Wilmington, Delaware on July 9, 2007 to receive testimony on implementation of rules supporting a modern system of rate regulation.

2. The Secretary of the Commission is directed to arrange for publication of this notice and order in the **Federal Register**.

Issued June 8, 2007.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E7–11466 Filed 6–14–07; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) for the following collection of information: 3220–0070, Employer Service and Compensation Reports.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR part 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation. The RRB utilizes Form(s) UI–41, Supplemental Report of Service and Compensation, and UI–41a, Supplemental Report of Compensation, to obtain the necessary information.

Our ICR describes the information we seek to collect from the public. Completion of the forms is mandatory. One response is required (per individual) from a respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens. The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 12639 on March 16, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer Service and Compensation Reports.

OMB Control Number: 3220–0070.

Form(s) submitted: UI–41, UI–41a.

Type of request: No material or nonsubstantive change to a currently approved collection.

Affected public: Business or other for-profit.

Abstract: The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Changes Proposed: The RRB proposes minor non-burden impacting editorial changes to Form(s) UI–41 and UI–41a.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 30.

Total annual responses: 3,000.

Total annual reporting hours: 400.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–11597 Filed 6–14–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Global Datatel, Inc. (n/k/a Xcana Petroleum, Inc.), Laminaire Corp. (n/k/a Cavico Corp.), Military Communications Technologies, Inc. (n/k/a Carbon Race Corporation), TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.), and Upside Development, Inc. (n/k/a Amorocorp); Order of Suspension of Trading

June 13, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Datatel, Inc. (n/k/a Xcana Petroleum, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001, nor has it provided the public with current financial information since the deregistration of its stock on October 9, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Laminaire Corp. (n/k/a Cavico Corp.) because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Military Communications Technologies, Inc. (n/k/a Carbon Race Corporation) because it has not filed any periodic reports since the period ended March 31, 2004, nor has it provided the public with current financial information since the deregistration of its stock on October 9, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.) because it has not filed any periodic reports since the period ended June 27, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Upside Development, Inc. (n/k/a Amorocorp) because it has not filed any periodic reports since the period ended September 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, It is ordered, pursuant to Section 12(k) of the Securities Exchange

Act of 1934, that trading in securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 13, 2007, through 11:59 p.m. EDT on June 26, 2007.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 07–2988 Filed 6–13–07; 11:55 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55866; File No. SR–NYSEArca–2007–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 14.3—References to Wave Securities, L.L.C.

June 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2007, NYSE Arca, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), proposes to amend NYSE Arca Equities Rule 14.3 to remove obsolete references to Wave Securities, L.L.C. (''Wave Securities''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Corporation proposes to amend NYSE Arca Equities Rule 14.3 to remove references to Wave Securities. In the first quarter of 2006, the Corporation sold Wave Securities, a wholly owned introducing broker subsidiary, to Merrill Lynch & Co., Inc. This sale terminated any affiliation between the Corporation and Wave Securities. Previously, in the second quarter of 2003, Archipelago Securities succeeded Wave Securities and assumed Wave Securities' outbound router function. As a result, the Corporation is removing from its rules the obsolete references to Wave Securities and replacing them, where applicable, with Archipelago Securities.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4[8] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

All submissions should refer to File Number SR–NYSEArca–2007–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEArca–2007–44 and should be submitted on or before July 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11541 Filed 6–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55890; File No. SR–NYSEArca–2007–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Shares of the Four Funds of StateShares, Inc.

June 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the following four funds (''Funds'') of StateShares™, Inc. (''Company'') based on certain underlying securities indexes (''Indexes'' or the ''Underlying Indexes'') pursuant to NYSE Arca Equities Rule 5.2(j)(3):

- StateShares™ Georgia 50 Exchange-Traded Fund
- StateShares™ North Carolina 50 Exchange-Traded Fund
- StateShares™ Virginia 50 Exchange-Traded Fund
- StateShares™ Washington 50 Exchange-Traded Fund

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list the Shares of the Funds. The Company is an investment company with 22 series of underlying fund portfolios and is registered under the Investment Company Act of 1940 (''1940 Act'').[3] Each Fund is registered with the Commission under the 1940 Act as an open-end, non-diversified management investment company. Each Fund's investment objective is to seek to track the performance, before fees and expenses, of a particular Underlying Index, as described more fully below. Each Fund focuses on a different geographic index.

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Investment Company Units'' (''ICUs'').[4] The Funds do not meet the ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs pursuant to Rule 19b–4(e) under the Act,[5] and thus cannot be listed without a filing made pursuant to Rule 19b–4 under the Act.[6] Specifically, the Indexes underlying these four Shares do not meet the requirement of Commentary .01(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) that, for component stocks representing at least 90% of the weight of the Underlying Index, each of such stocks has a minimum monthly trading volume during each of the last six months of at least 250,000 shares.[7]

Operation of the Funds. XShares Advisors LLC, a subsidiary of XShares Group LLC (''XG'') would be the investment adviser (''Advisor'') to the Funds. The Advisor is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (''Advisers Act'').[8] The Advisor would have overall responsibility for the general management and administration of each Fund, subject to the supervision of the Funds' Board of Directors. Under the Investment Advisory Agreement, the Advisor would be responsible for arranging sub-advisory, transfer agency, custody, fund administration, and all

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Post-Effective Amendment No. 1 to the Company's Registration Statement on Form N–1A, as filed with the Commission on February 28, 2007 and accompanying Statement of Additional Information (''SAI'') (File No. 333–139823) (''Registration Statement''). The Company was organized as a Maryland corporation on December 26, 2006.

[4] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–1998–29) (approving NYSE Arca Equities Rule 5.2(j)(3)); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving generic listing standards for ICUs).

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4.

[7] As of April 4, 2007, stocks with a monthly trading volume during each of the last six months of at least 250,000 shares represented 88.26%, 87.63%, 84.28%, and 89.34% of the weight of the S&P Custom/StateShares™ Georgia 50 Index, S&P Custom/StateShares™ North Carolina 50 Index, S&P Custom/StateShares™ Virginia 50 Index, and S&P Custom/StateShares™ Washington 50 Index, respectively. Source: Bloomberg.

[8] 15 U.S.C. 80b.

other non-distribution-related services for each Fund. The Advisor would also be responsible for employing any sampling strategy for each Fund. Pursuant to the Investment Advisory Agreement, the Advisor would be authorized to engage one or more sub-advisors to perform any of the services contemplated to be performed by the Advisor under the Investment Advisory Agreement.

BNY Investment Advisors (''Sub-Advisor''), a separate identifiable division of The Bank of New York (''BONY''), a New York State banking corporation, would act as investment sub-advisor to each Fund. Pursuant to a Sub-Advisory Agreement between the Advisor and the Sub-Advisor, the Sub-Advisor would be responsible for the day-to-day management of each Fund, subject to the supervision of the Advisor and the Funds' Board of Directors. The Sub-Advisor would be responsible for implementing the replication strategy for each Fund with regard to its Underlying Index and for general administration, compliance, and management services, as may be agreed between the Advisor and the Sub-Advisor from time to time.

The Index Administrator. Standard & Poor's is the index administrator (''Index Administrator'') and in that capacity has sole responsibility and authority for maintaining each Underlying Index and determining, in accordance with the objective criteria, which securities are to be added or removed from an Underlying Index. Each Underlying Index is compiled, maintained, and calculated without regard to the Advisor, Sub-Advisor, or Distributor (described below). The Index Administrator has no obligation to take the specific needs of the Advisor, Sub-Advisor, or Distributor into account in the determination and calculation of the Underlying Index.

Administrator, Accounting Agent, Custodian, and Transfer Agent. BONY would serve as administrator, accounting agent, custodian, and transfer agent for each Fund (''Administrator''). As the Administrator, BONY would be obligated on a continuous basis to provide certain administration, valuation, accounting, and computational services necessary for the proper administration of the Company and each Fund. BONY also would hold each Fund's assets, calculate the NAV of each Fund's Shares, and calculate net income and realized capital gains or losses for each Fund.

The Distributor. ALPS Distributors, Inc. (''Distributor'') would be the distributor of Creation Units (as described more fully below) for each Fund on an agency basis. The Distributor has entered into a Distribution Agreement with the Company pursuant to which it would distribute the Shares of each Fund. Shares would be offered continuously for sale by each Fund through the Distributor only in Creation Unit Aggregations (as described more fully below). Fund Shares in less than Creation Unit Aggregations would not be distributed by the Distributor. The Distributor would deliver the prospectuses and, upon request, the Statement of Additional Information (''SAI'') to persons purchasing Creation Unit Aggregations and would maintain records of orders placed with it. The Distributor is a broker-dealer registered under the Act and a member of NASD.

Each Fund has elected and intends to continue to qualify as a ''regulated investment company'' (a ''RIC'') under the Internal Revenue Code (''Code''). Among other things, each Fund must meet certain diversification tests imposed by the Code to satisfy RIC requirements.[9]

Description of the Funds and the Underlying Indexes. According to the Funds' Registration Statement, each Fund's investment objective is to seek to track the performance, before fees and expenses, of a particular Underlying Index. Each Underlying Index is designed to track various geographic sub-sectors of the economy and serve as: (1) Performance benchmarks for portfolio managers and investors who invest in securities of these issuers; (2) performance yardsticks for issuers in these geographic areas; and (3) vehicles for directing attention to regional investments and allocations within the U.S. economy. Each Fund focuses on a different geographic index. The Underlying Indices have been designed geographically in each of the following areas: Georgia, North Carolina, Virginia, and Washington.

Each Underlying Index was created and developed by XG based on its own proprietary model. In developing each Underlying Index, XG has established specific characterization/inclusion/exclusion criteria governing the stocks that are included in each Underlying Index. Each Underlying Index is maintained by the Index Administrator based on such criteria and is generally reconstituted on an annual basis. Decisions regarding additions to, and removals from, each individual Underlying Index are made by the Index Administrator, on an annual basis, in its sole discretion.

The Advisor uses a ''passive,'' or ''indexing,'' approach in managing each Fund. The Funds do not seek to outperform any particular market sector and would not assume temporary defensive positions when markets decline or appear overvalued. Each Fund would invest at least 90% of its assets in the common stocks of companies in the Underlying Index. Because each Underlying Index is comprised only of stocks from companies headquartered in the named State, as indicated by its name (*e.g.,* only ''Georgia'' companies are contained in the S&P Custom/StateShares™ Georgia 50 Index), each Fund would invest at least 90% of its assets in such companies. Each Fund may also invest up to 10% of its assets in futures contracts, options on futures contracts, options, or swaps on securities of companies in the Underlying Index, as well as cash and cash equivalents, such as money market instruments (subject to applicable limitations of the 1940 Act). Each Fund would attempt to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities' weightings in the Underlying Index.[10] In managing the Funds, the Advisor seeks a correlation of 0.95 or better between each Fund's performance and the performance of the Underlying Index. A figure of 1.00 would represent perfect correlation. There is no guarantee that the Advisor will be able to obtain this level of correlation.

From time to time, it may not be possible, for regulatory or other legal reasons, to replicate each Underlying Index and in such cases the Advisor may pursue a sampling strategy in managing the portfolio. Pursuant to this strategy, a Fund may invest the remainder of its assets in securities of companies not included in an Underlying Index if the Advisor believes that such securities would

[9] Among these is a requirement that, at the close of each quarter of each Fund's taxable year: (1) At least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities or other RICs).

[10] Each company in the applicable Underlying Index is assigned a weight factor based upon total employees. Companies with more employees are assigned higher weighting than companies with fewer employees.

assist the Fund in tracking the Underlying Index. If a Fund pursues a sampling strategy, it would continue to invest at least 90% of its assets in the common stocks of the companies in the Underlying Index.

The component securities of the Underlying Indexes are all listed on a national securities exchange.[11] Only companies with market capitalizations greater than $100 million for at least two of the preceding three quarters are eligible for inclusion in each of the Indexes. The StateShares™ Georgia 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Georgia 50 Index. The StateShares™ North Carolina 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ North Carolina 50 Index. The StateShares™ Virginia 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Virginia 50 Index. The StateShares™ Washington 50 Exchange-Traded Fund seeks to track the performance, before fees and expenses, of the S&P Custom/StateShares™ Washington 50 Index.

Information about each Underlying Index, including the component securities in each Underlying Index and value of the securities in each Underlying Index are disseminated every 15 seconds during the Core Trading Session through Reuters.

Each Fund would impose transaction fees on in-kind purchases and redemptions of the Fund to cover the custodial and other costs incurred by the Fund in effecting in-kind trades. To compensate the Company for transfer and other transaction costs involved in creation transactions through the clearing process (as described below), investors would be required to pay a fixed creation transaction fee, payable to the Company regardless of the number of creations made each day. A redemption transaction fee would be imposed to offset transfer and other transaction costs that may be incurred by a Fund. An additional variable charge for cash redemptions (when cash redemptions are available or specified) for a Fund may be imposed. The creation and redemption transaction fees for creations and redemptions in-kind for the Funds are described in the Funds' prospectuses.

[11] *See* e-mail from Tim Malinowski, Director, NYSE Group, Inc. on May 30, 2007 to Mitra Mehr, Special Counsel, Division of Market Regulation (''Division''), Commission (''NYSE Arca May 30th e-mail'').

Each Fund would issue and redeem, on a continuous basis, shares at its net asset value (''NAV'') only in blocks of 100,000 shares or multiples thereof (each, a ''Creation Unit'' or a ''Creation Unit Aggregation''), generally in exchange for a basket of equity securities included in the Underlying Index, together with the deposit of a specified cash payment. Shares would be redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment.

All orders to purchase Shares of each Fund in Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either: (1) A ''Participating Organization,'' *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency that is registered with the Commission (the ''Clearing Process''); or (2) a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the Distributor governing the purchase and redemption of Creation Units.

Consideration for Purchase of Creation Units. The consideration for purchase of a Creation Unit from each Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (''Deposit Securities'') per each Creation Unit Aggregation constituting a substantial replication of the stocks included in each Fund's Underlying Index and an amount of cash (''Cash Component'') consisting of a Balancing Amount (described below) and a transaction fee. Together, the Deposit Securities and the Cash Component constitute the Fund Deposit.

The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities (''Deposit Amount''). It ensures that the NAV of a Fund Deposit (not including the transaction fee) is identical to the NAV of the Creation Unit it is used to purchase. If the Balancing Amount is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities), then that amount would be paid by the purchaser to the Fund in cash. If the Balancing Amount is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities), then that amount would be paid by the Fund to the purchaser in cash (except as offset by the transaction fee).

The Company, through the NSCC, makes available on each business day, immediately prior to the opening of business on the NYSE (currently 9:30 a.m. Eastern Time), a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund (based on information at the end of the previous business day). The Fund Deposit is applicable, subject to any adjustments as described below, to effect purchases of Creation Units of a Fund until such time as the next-announced Fund Deposit composition is made available. Each Fund reserves the right to accept a nonconforming Fund Deposit.

The identity and number of shares of the Deposit Securities required for a Fund Deposit may change to reflect rebalancing adjustments and corporate actions by a Fund, or in response to adjustments to the weighting or composition of the component stocks of the Underlying Index. In addition, the Company reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security that: (1) May not be available in sufficient quantity for delivery; (2) may not be eligible for transfer through the Clearing Process; or (3) may not be eligible for trading by a Participating Organization or the investor for which a Participating Organization is acting. Brokerage commissions incurred in connection with acquisition of Deposit Securities not eligible for transfer through the systems of DTC and hence not eligible for transfer through the Clearing Process would be an expense of each Fund. However, the Advisor, subject to the approval of the Board of Directors, may adjust the transaction fee to protect existing shareholders from this expense.

In addition to the list of names and numbers of securities constituting the current Deposit Securities, the Company, through the NSCC, would also make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of each Fund. All questions as to the number of shares of each security in the Deposit Securities and the validity, form, eligibility, and acceptance for deposit of any securities to be delivered should be determined by the appropriate Fund, and the Fund's determination should be final and binding.

Redemption of Shares in Creation Units. Fund Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Administrator

and only on a business day. A Fund would not redeem Shares in amounts less than Creation Unit Aggregations. A beneficial owner must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation to have such Shares redeemed by the Company. There can be no assurance, however, that there will be sufficient liquidity in the public trading market at any time to permit assembly of a Creation Unit Aggregation. Investors should expect to incur brokerage and other costs in connection with assembling a sufficient number of Fund Shares to constitute a redeemable Creation Unit Aggregation.

With respect to a Fund, the Administrator, through the NSCC, makes available prior to the opening of business on the NYSE (currently 9:30 a.m. Eastern Time) on each business day, the identity of the Fund securities that would be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as described below) on that day. Fund Shares received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation would generally consist of Fund Shares, as announced on the business day of the request for redemption received in proper form, plus or minus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Shares (the ''Cash Redemption Amount''), less a redemption transaction fee. If the Fund Shares have a value greater than the Fund Shares' NAV, a compensating cash payment equal to the difference must be made by or through an Authorized Participant by the redeeming shareholder.

The right of redemption may be suspended or the date of payment postponed for each Fund: (1) For any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the NYSE is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the shares of a Fund or determination of a Fund's NAV is not reasonably practicable; or (4) in such other circumstances as is permitted by the Commission.

Dividends, Distributions, and Taxes. Dividends from net investment income, if any, would be declared and paid annually by each Fund. Distributions of net realized securities gains, if any, generally would be declared and paid once a year, but the Company may make distributions on a more frequent basis for a Fund to improve index tracking or to comply with the distribution requirements of the Code, in all events in a manner consistent with the provisions of the 1940 Act.

Dividends and other distributions on Shares would be distributed on a pro-rata basis to beneficial owners of such Shares. Dividend payments would be made through DTC Participants and Indirect Participants to beneficial owners then of record with proceeds received from the Company.

The Company would make additional distributions to the extent necessary: (1) To distribute the entire annual taxable income of the Company, plus any net capital gains; and (2) to avoid imposition of the excise tax imposed by Section 4982 of the Code. Management of the Company reserves the right to declare special dividends if, in its reasonable discretion, such action is necessary or advisable to preserve the status of each Fund as a RIC or to avoid imposition of income or excise taxes on undistributed income.

Dividend Reinvestment Service. The Company would not make the DTC book-entry dividend reinvestment service available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by beneficial owners of Funds through DTC Participants for reinvestment of their dividend distributions. Investors would have to contact their brokers to ascertain the availability and description of these services. A broker-dealer could require investors to adhere to specific procedures and timetables to participate in the dividend reinvestment service, and investors would have to ascertain from their brokers such necessary details. If this service is available and used, dividend distributions of both income and realized gains would be automatically reinvested in additional whole Shares issued by the same Fund based on a payable date NAV.

Availability of Information Regarding Shares and Underlying Indexes. The Company, through the NSCC, would make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern Time), a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund (based on information at the end of the previous business day).

According to the Funds' Registration Statement, the NAV of each Fund's shares would be calculated each business day as of the close of regular trading on the NYSE, generally 4 p.m. Eastern Time. NAV per-share would be computed by dividing the net assets by the number of shares outstanding.

Additional information regarding the indicative value of shares of each Fund, also known as the ''indicative optimized portfolio value'' (''IOPV''), would be disseminated every 15 seconds through the Consolidated Tape throughout the Opening, Core, and Late Trading Sessions (4 a.m. to 8 p.m. Eastern Time) by the Exchange. The IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a ''real-time'' update of the NAV, which is computed only once a day. The IOPV is generally determined by using both current market quotations and/or quotations obtained from broker-dealers that may trade in the portfolio securities held by a Fund.

The Funds' Web site (*http://www.StateSharesinc.com*) would show the prior day's closing NAV and closing market price for each Shares. In addition, the Funds' Web site will contain the following information, on a per-Share basis, for each Fund: (1) The prior business day's NAV and the Bid/Ask Price and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Funds' Web site would contain information regarding the premiums and discounts at which shares of each Fund has traded. The Exchange would also disseminate a variety of data such as Total Cash Amount Per Creation Unit, Shares Outstanding, and NAV with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines. In addition, quotation and last-sale information for the Shares would be widely disseminated pursuant to the CTA Plan.[12]

Each Fund's portfolio holdings would be publicly disseminated each day that

[12] *See* e-mail from Tim Malinowski, Director, NYSE Group, Inc. on May 24, 2007 to Mitra Mehr, Special Counsel, Division, Commission.

a Fund is open for business through financial reporting and news services including publicly available Web sites. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, would be publicly disseminated daily prior to the opening of the NYSE, via the NSCC.

The Company has informed the Exchange that each Fund would make the NAV for each Fund available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund Shares.

Information about each Underlying Index, including the component securities in each Underlying Index and the value of the securities in each Underlying Index, would be disseminated every 15 seconds during NYSE Arca's Core Trading Session through Reuters.[13]

The Underlying Indexes

S&P Custom/StateShares™ Georgia 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Georgia 50 Index component securities had a modified market capitalization of approximately $72,107,201,000, representing 50 securities. The five highest weighted securities represented approximately 15.37% of the index weight. The heaviest weighted security represented approximately 3.20% of the index weight. Component stocks accounting for only 88.26% of the weight of the Index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.[14]

S&P Custom/StateShares ™ North Carolina 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ North Carolina 50 Index component securities had a modified market capitalization of approximately $75,522,378,000, representing 50 securities. The five highest weighted securities represented approximately 15.22% of the index weight. The heaviest weighted security represented approximately 3.30% of the index weight. Component stocks accounting for only 87.63% of the weight of the Index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.[15]

S&P Custom/StateShares™ Virginia 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Virginia 50 Index component securities had a modified market capitalization of approximately $69,886,467,000, representing 50 securities. The five highest weighted securities represented approximately 15.79% of the index weight. The heaviest weighted security represented approximately 3.67% of the index weight. Component stocks accounting for only 84.28% of the weight of the index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.[16]

S&P Custom/StateShares™ Washington 50 Index. As of April 4, 2007, the S&P Custom/StateShares™ Washington 50 Index component securities had a modified market capitalization of approximately $70,059,732,000, representing 50 securities. The five highest weighted securities represented approximately 15.48% of the index weight. The heaviest weighted security represented approximately 3.34% of the index weight. Component stocks accounting for only 89.34% of the weight of the index satisfied the requirement of having monthly trading volume during each of the last six months of at least 250,000 shares.[17]

Criteria for Initial and Continued Listing. The Shares would be subject to the criteria for initial and continued listing of ICUs under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2). A minimum of one Creation Unit (at least 100,000 Shares) would be required to be outstanding at the start of trading. This requirement would be comparable to requirements that have been applied to previously listed series of ICUs. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The continued listing criteria for ICUs under NYSE Arca Equities Rule 5.5(g)(2) provide that the Exchange would consider the suspension of trading and delisting (if applicable) of the Shares in any of the following circumstances:

- Following the initial 12-month period beginning upon the commencement of trading of the Shares of a Fund, there are fewer than 50 record and/or beneficial holders of such Shares for 30 or more consecutive trading days; or
- The value of the Underlying Index of a Fund is no longer calculated or available; or
- Such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the Exchange would remove the Shares from trading and listing upon termination of the Company.

The Exchange represents the Company and is required to comply with Rule 10A–3 under the Act[18] for the initial and continued listing of the Shares.

Trading Rules. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for each Fund on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (4 a.m. to 8 p.m. Eastern Time). The minimum trading increment for shares of the Funds on the Exchange would be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of each Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the financial instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule[19] or by the halt or suspension of trading of the underlying securities. If the IOPV or the Index value applicable to a series of ICUs is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IOPV or the Index value occurs. If the interruption to the dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Surveillance. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that

[13] *See* e-mail from Tim Malinowski, Director, NYSE Group, Inc. on June 7, 2007 to Mitra Mehr, Special Counsel, Division, Commission.

[14] Source: Bloomberg.

[15] *See Id.*

[16] *See Id.*

[17] *See Id.*

[18] 17 CFR 240.10A–3.

[19] NYSE Arca Equities Rule 7.12.

these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[20]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[21] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the requirement that each ETP Holder deliver a prospectus to an investor purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin would reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would also discuss any exemptive, no-action, and interpretive relief granted by the Commission from Section 11(d)(1) of the Act[22] and certain rules under the Act, including Rule 10a–1, Regulation SHO, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act. The Bulletin would also disclose that the NAV for the Shares would be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5)[24] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–37 and should be submitted on or before July 6, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Shares of the four Funds do not meet the ''generic'' listing standards of NYSE Arca Rule 5.2(j)(3) and thus cannot be listed in reliance upon Rule

[20] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com*.

[21] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for its customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation. *See* Securities Exchange Act Release No. 34–54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[22] 15 U.S.C. 78k(d)(1).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

19b–4(e) under the Act. The Underlying Indexes do not meet the requirement of Commentary .01(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), which requires that component stocks of an Underlying Index representing at least 90% of the weight of the Underlying Index have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. Instead, as of April 4, 2007, for each Fund, component stocks representing just under 90% of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000.[27] The Commission believes that the listing and trading of the Shares is consistent with the Act. The Commission notes that it previously has approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight amount.[28]

The Commission believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[29] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be widely disseminated pursuant to the CTA Plan. Moreover, the IOPV will be calculated and disseminated at least every 15 seconds throughout NYSE Arca's three trading sessions, and the Index value will be calculated and disseminated every 15 seconds during the Exchange's Core Trading Session. The NAV of each Fund will be calculated and disseminated once each trading day. The Funds' Web site would include, among other things, each Fund's prospectus and SAI, information regarding the Underlying Index for each Fund,[30] the prior day's closing NAV, a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against the NAV on a per-share basis, and information regarding the premiums and discounts at which shares of each Fund have traded. In sum, the Commission believes that the proposal is reasonably designed to facilitate access to information that will assist investors in properly valuing the Shares.

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. The Exchange has represented that if the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund shares.

The Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. If the IOPV or the Index value applicable to a series of Shares is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV or the Index value occurs. If the interruption to the calculation and dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Shares are consistent with the Act. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange will rely on its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. These procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange may obtain information via the ISG from other exchanges that are members or affiliates of the ISG.

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

3. If the IOPV or the Index value applicable to a series of Shares is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV or the Index value occurs. If the interruption to the calculation and dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

This Order is conditioned on NYSE Arca's adherence to the foregoing representations.

The Commission finds good cause to approve the proposed rule change, prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[31] Except for one criterion relating to the monthly trading volume of the components of the Underlying Indexes, each Fund meets the ''generic'' listing standards of NYSE Arca Equities Rule 5.2(j)(3). In this case, as of April 4, 2007, component stocks representing just under 90% of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000, as required by NYSE Arca generic listing standards.[32] The Commission notes that it previously has approved exchange rules that contemplate the listing and trading of derivative securities based on indices with underlying component stocks that did not meet certain quantitative criteria of the generic listing standards by a slight amount.[33] The listing and trading of the Shares do not appear to present any new or significant regulatory concerns. Accelerating approval will allow the Shares to trade on NYSE Arca without undue delay and should generate

[27] The percentages ranged from 84.28% for the S&P Custom/StateShares™ Virginia 50 Index to 89.34% for the S&P Custom/StateShares™ Washington 50 Index. *See supra* note 7.

[28] *See* Securities Exchange Act Release No. 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR–NYSEArca–2007–27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was only marginally higher than that required by NYSE Arca's generic listing standards); Securities Exchange Act Release No. 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR–NYSEArca–2005–67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S. Telecommunications Sector Index Fund where the weighting of the five highest components of the respective underlying indexes was higher than that required by NYSE Arca's generic listing standards). *See also* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the trading pursuant to UTP of shares of Vanguard Total Stock Market (VIPERs), iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds and iShares Russell 2000 Growth Funds, none of which met the volume requirement of the generic listing criteria for NYSE).

[29] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[30] *See* NYSE Arca May 30th e-mail.

[31] 15 U.S.C. 78s(b)(2).

[32] Component stocks representing only 88.26% (S&P Custom/StateShares™ Georgia 50 Index), 87.63% (S&P Custom/StateShares™ North Carolina 50 Index), 84.28% (S&P Custom/StateShares™ Virginia 50 Index), and 89.34% (S&P Custom/StateShares™ Washington 50 Index) of the weight of each Underlying Index had a minimum monthly trading volume during each of the last six months of at least 250,000.

[33] *See supra* note 28.

additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2007–37), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11552 Filed 6–14–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55891; File No. SR–Phlx–2007–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Payment for Order Flow Pilot Program

June 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its payment for order flow pilot program, which is currently in effect until May 27, 2007, for an additional one-year period until May 27, 2008. This proposal is scheduled to expire on the same date as the one-year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.[5]

Other than extending the date of the pilot program for an additional year, no other changes to the Exchange's current payment for order flow program are being proposed at this time.

The Exchange is also proposing to make minor clarifying changes to the Exchange's Summary of Equity Option and RUT and RMN Charges fee schedule to update the language that appears in a footnote and to clarify the title relating to the Exchange's payment for order flow fees.

Below is the text of the proposed rule change. Proposed deletions are in [brackets]; proposed additions are *italicized.*

Summary of Equity Option Charges (p. 3/6)

* * * * *

[EQUITY OPTION] PAYMENT FOR ORDER FLOW FEES*

(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program. * * *

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ and options that are trading in the Penny Pilot Program—$0.25 per contract

Remaining Equity Options—$0.70 per contract

See Appendix A for additional fees.

*Assessed on transactions resulting from customer orders and are available to be disbursed by the Exchange according to the instructions of the specialist units/specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. The [is proposal] *payment for order flow fees* [will be in effect for trades settling on or after October 1, 2005 and] will remain in effect as a pilot program that is scheduled to expire on May 27, 200[7]*8.*

***Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or specialist who paid into that pool of funds.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of extending the Exchange's payment for order flow program for an additional year is to remain competitive with other options exchanges that administer payment for order flow programs.[6]

Currently, the following payment for order flow fees are in effect at the Exchange:[7] (1) Equity options (other than those options that trade as part of

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The provisions of Phlx Rule 1080(l) are in effect for a one-year pilot period. The Exchange filed a separate proposed rule change to extend the Rule 1080(l) one-year pilot program for an additional year until May 27, 2008. *See* Securities Exchange Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR–Phlx–2007–37).

[6] *See e.g.,* Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR–CBOE–2006–53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006) (SR–ISE–2006–36).

[7] *See* Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR–Phlx–2006–33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR–Phlx–2006–47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR–Phlx–2006–56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR–Phlx–2007–12).

the Exchange's Penny Pilot Program) [8] and options on the Russell 2000® Index [9] traded under the symbol RUT and options on the one-tenth value Russell 2000® Index traded under the symbol RMN, are all assessed $0.70 per contract; and (2) options that trade as part of the Exchange's Penny Pilot Program are assessed $0.25 per contract. Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM [10] and executed on the Exchange are assessed a payment for order flow fee,[11] while non-electronically-delivered orders (*i.e.*, represented by a floor broker) are not assessed a payment for order flow fee.[12]

The purpose of making minor technical changes to the payment for order flow fee section of the Exchange's Summary of Equity Option and RUT and RMN Charges fee schedule is to delete obsolete words. Additionally, the purpose of deleting the words ''equity option,'' which appear in front of the payment for order flow fee section is to more clearly reflect that RUT and RMN, although index options, are also assessed payment for order flow charges.[13]

This proposal, consistent with the Exchange's current payment for order flow program, will remain in effect as a pilot program that is scheduled to expire on the same date as the one-year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change to amend its schedule of fees is consistent with Section 6(b) of the Act [15] in general, and Section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–39 and should be submitted on or before July 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11551 Filed 6–14–07; 8:45 am]

BILLING CODE 8010–01–P

[8] Currently, the following option classes, listed by symbol, are traded in the Penny Pilot Program: QQQQ, IWM, SMH, GE, AMD, MSFT, INTC, CAT, WFMI, TXN, A, FLEX, and SUNW. *See* Securities Exchange Act Release No. 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05). The Penny Pilot Program is scheduled to expire on July 26, 2007. If the Penny Pilot Program is not extended, the Exchange intends to file a separate proposed rule change to make any necessary changes to the payment for order flow pilot dates.

[9] Russell 20007® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[10] The term ''AUTOM'' is used interchangeably with the term ''Phlx XL,'' the Exchange's fully electronic trading platform for options. The Exchange intends to file a separate proposed rule change to update its rules to reflect that orders are now delivered electronically over Phlx XL.

[11] Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a payment for order flow fee, in addition to ROTs. Therefore, the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and an ROT, a customer and a Directed ROT, or a customer and a specialist.

[12] Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[13] *See* Securities Exchange Act Release No. 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR–Phlx–2007–12) (The Exchange assesses equity option charges, including payment for order flow charges, on options on RUT and RMN).

[14] *See supra*, note 5.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5825]

Title: Correction Request to Public Notice 5807

ACTION: Cancellation of Advisory Committee on Democracy Promotion July 18, 2007 meeting.

SUMMARY: On June 8, 2007, Notice was published in the **Federal Register** (volume 72, number 110, 31872–31873) announcing a meeting of the Advisory Committee on Democracy Promotion on July 18, 2007 at the Department of State. Due to scheduling conflicts, the meeting has now been cancelled.

FOR FURTHER INFORMATION CONTACT: For more information, contact Paul Lettow, Senior Advisor to the Under Secretary for Democracy and Global Affairs, Department of State, Washington, DC 20520, telephone: (202) 647–1189.

Dated: June 8, 2007.

Barry F. Lowenkron,

Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. E7–11594 Filed 6–14–07; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 5808]

U.S. Department of State Advisory Committee on Private International Law: Working Group I of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services

Summary: The Advisory Committee's study group is participating in an initiative by the United National Commission for International Trade Law (UNCITRAL) to revise the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (''Model Procurement Law''), and its Guide to Enactment, available at *http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html.* The UNCITRAL Model Procurement Law is not binding on the United States, but it is cited and relied upon in many other nations as a model procurement code.

The reform effort regarding the Model Procurement Law is being undertaken by UNCITRAL's Working Group I, which has been meeting twice annually, in Vienna and New York, to develop new language for the UNCITRAL Model Procurement Law and the Guide to Enactment. The working papers that reflect this effort are gathered at the UNCITRAL Web site, at *http://www.uncitral.org/uncitral/en/commission/working_groups/1Procurement.html.*

As part of its broader effort to reform the UNCITRAL Model Procurement Law to reflect advances in electronic procurement, the UNCITRAL working group has made substantial progress in developing new provisions in the model law. At its May 2007 meeting in New York, the UNCITRAL working group addressed proposed provisions that would: (a) Set standards for the use of electronic communications in procurement under the UNCITRAL Model Procurement Law; (b) Describe when, and how, electronic reverse auctions might be used under the model law; and (c) Define rules for the use of indefinite-delivery, indefinite-quantity (''IDIQ'') contracts, generally referred to as ''frameworks agreements'' in the European Union and under the proposed changes to the Model Procurement Law.

The provisions under consideration by the working group are described in, *inter alia,* working paper A/CN.9/WG.I/WP.51 (Mar. 13, 2007), available at the previously referenced Web site. A report on the May 2007 meeting is to be published by the UNCITRAL Secretariat at the same Web site.

The Advisory Committee's study group will be holding a public meeting to review and discuss the proposed reforms to the UNCITRAL Model Procurement Law at The George Washington University Law School Faculty Conference Center, 5th Floor 2000 H Street, NW., Washington, DC on June 27, 2007 from 1 p.m. EST to 3 p.m. EST. Written comments need to be submitted by June 22, 2007 to the Office of Private International Law, U.S. Department of State, 2430 E Street, NW., Washington, DC 20037–2851, attn: Michael Dennis, or by facsimile to 202–776–8482, or by electronic mail to *DennisMJ@State.gov.* Any persons wishing to reserve an opportunity to comment at the public meeting should note so in a submission to the address above or should call Trisha Smeltzer at 202–776–8423.

Dated: June 4, 2007.

Michael J. Dennis,

Attorney-Advisory, Office of the Legal Advisor, Office of Private International Law, Department of State.

[FR Doc. E7–11596 Filed 6–14–07; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance; Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Cleveland Hopkins International Airport (CLE) from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant, unimproved land owned by the City of Cleveland (City).

The City has requested from FAA a ''Release from Federal agreement obligated land covenants'' to sell portions of three (3) parcels. The property proposed for release was acquired by the City without Federal funding. There are no impacts to the airport by allowing the City to dispose of the vacant property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 16, 2007.

ADDRESSES: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Cleveland Hopkins International Airport, Cleveland, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property (portions of Parcel 029–38–002 (New Lot 5A), Parcel A, and Parcel B) located in Cleveland, Cuyahoga County, Ohio, and described as follows:

Description of That Portion of Parcel No. 029–38–002 (New Lot 5A) Being Released (10.161 Acres)

Situated in the City of Cleveland, County of Cuyahog and State of Ohio known as being part of Original Rockport Township Section 4 and also part of New Lot 5A as recorded in Volume 333, Page 59 of the Cuyahoga County Record of Maps and being more fully described as follows:

Commencing at the intersection of the centerline of Brookpark Road, 100 feet wide, as recorded in Volume 130, page 68 of the Cuyahoga County Record of Plats, with the original centerline of Old Grayton Road, 60.00 feet wide, said intersection being the Southeasterly corner of a parcel of land conveyed to the City of Cleveland by deed recorded in Volume 3433, Page 340 of Cuyahoga County Deed Records;

Thence Westerly along the Southerly line of land so conveyed to the City of Cleveland and the centerline of said Brookpark Road, South 89 degrees 43 minutes 19 seconds West, 232.87 feet to a point;

Thence North 00 degrees 16 minutes 41 seconds West, 50.00 feet to an iron pin set at the northerly right of way line of said Brookpark Road and the Principal Place of Beginning of the parcel herein described;

Thence Westerly along the Southerly line of said New Lot 5A and said northerly right of way line of Brookpark Road, South 89 degrees 43 minutes 19 seconds West, 471.47 feet to the Southwesterly corner of said Lot 5A, said corner also being on the easterly line of land conveyed to the United States of America by deed recorded in Volume 8041, Page 262 of Cuyahoga County Deed records and referenced by an iron pin monument box found South 00 degrees 38 minutes 24 seconds East, 50.00 feet from said corner;

Thence Northerly along the Westerly line of said New Lot 5A and the Easterly line of land so conveyed to the United States of America, North 00 degrees 38 minutes 24 seconds West, 595.97 feet to a K.S. capped iron pin found at the Northwesterly corner of said City of Cleveland property;

Thence North 88 degrees 46 minutes 18 seconds East, 612.48 feet to an iron pin set and the southerly line of New Lot 1A as recorded in Volume 333, Page 59 of said Cuyahoga County Record of Maps;

Thence, continuing North 88 degrees 26 minutes 58 seconds East, a distance of 380.04 feet to an iron pin set on the Westerly curved right of way line of Relocated Old Grayton Road;

Thence, Southerly along said Westerly curved right of way line of Relocated Old Grayton Road, along the arc of a curve bearing to the left, said curve having a radius of 410.00 feet, an included angle of 65 degrees 36 minutes 47 seconds, a chord which bears South 20 degrees 47 minutes 52 seconds West and measures 444.28 feet, a distance of 469.52 feet to an iron pin set;

Thence, South 89 degrees 43 minutes 19 seconds West, a distance of 357.34 feet, passing through an iron pin set at 157.34 feet, to an iron pin set;

Thence, South 00 degrees 16 minutes 41 seconds East, a distance of 200.00 feet to an iron pin set at the northerly right of way line of said Brookpark Road and the Principal Place of Beginning and containing 10.161 acres of land, more or less, as surveyed by Terence R. Allison, Professional Surveyor No. 7176 of Michael Benza & Associates, Inc., dated May 18, 2005, be the same more or less, but subject to all legal highways.

Description of Parcel A Being Released (1.2056 Acres)

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, known as being part of Original Middleburg Township Lot No. 3, Section No. 21, also being part of the original Cedar Point Road (vacated), also part of lands conveyed to the City of Cleveland by deed dated November 15, 1982 as recorded in Volume 15676, Page 651 of Cuyahoga County Recorder's Records, being more fully described as follows:

Commencing at an iron pin in a monument box found and used at the intersection of the centerline of Cedar Point Road, having a 60-foot Right-of-Way with the centerline of Lucille Avenue, having a 60-foot Right-of-Way, also being a point on the Western line of said Lot No. 3;

Thence along the centerline of said Cedar Point Road, bearing South 89 degrees 09 minutes 47 seconds East, a distance of 1206.17 feet to an iron pin in a monument box found and used at a point of curvature in the centerline of Cedar Point Road;

Thence along the centerline of said Cedar Point Road and along a tangent curve to the left, the long chord of which bears North 55 degrees 52 minutes 14 seconds East for a distance of 596.21 feet, having a radius of 520.24 feet and an arc length of 634.87 feet to a point of tangency therein, as witnessed by a 5/8-inch iron pin without I.D. cap, found South 04 degrees 30 minutes 28 seconds East, a distance of 0.45 feet;

Thence continuing along the centerline of Cedar Point Road, bearing North 20 degrees 54 minutes 57 seconds East, a distance of 161.51 feet to a point of curvature therein, as witnessed by a 1/2-inch iron pin without I.D. cap, found North 59 degrees 29 minutes 39 seconds West, a distance of 0.20 feet;

Thence continuing along the centerline of Cedar Point Road and along a tangent curve to the right, the long chord of which bears North 31 degrees 44 minutes 19 seconds East for a distance of 153.56 feet, having a radius of 408.89 feet and an arc length of 154.48 feet to a point on the Northern terminus of Cedar Point Road;

Thence along the Northern terminus of Cedar Point Road, bearing South 45 degrees 11 minutes 14 seconds East, a distance of 30.03 feet to a point on the Eastern Right-of-Way line of Cedar Point Road, also being a point on a Northern corporation line of the City of Cleveland, as witnessed by a 5/8-inch iron pin without I.D. cap, found North 50 degrees 11 minutes 03 seconds West, a distance of 0.61 feet and the Principal Place of Beginning of the parcel herein described;

Thence along the Southeasterly projection of the Northern terminus of Cedar Point Road, bearing South 45 degrees 11 minutes 14 seconds East, a distance of 69.19 feet to a point ont he Eastern Corporation line of the City of Cleveland;

Thence parallel to the centerline of Cedar Point Road and along a non-tangent curve to the left, the long chord of which bears South 31 degrees 22 minutes 42 seconds West for a distance of 112.50 feet, having a radius of 309.78 feet and an arc length of 113.13 feet to a point of tangency, as witnessed by a 5/8-inch iron pin with I.D. cap marked NASA, found and used;

Thence continuing parallel to the centerline of Cedar Point Road, bearing South 20 degrees 54 minutes 57 seconds West, a distance of 161.51 feet to an iron pin set;

Thence continuing parallel to the centerline of Cedar Point Road, along a tangent curve to the right, the long chord of which bears South 47 degrees 07 minutes 17 seconds West for a distance of 547.01 feet, having a radius of 619.35 feet, and an arc length of 566.56 feet to an iron pin set on the Southeastern line of lands conveyed to Cleveland Electric Illuminating by deed dated March 21, 2002 as recorded in AFN 200203211027 of Cuyahoga County Recorder's Records, also being a point

on a Northern Corporation line of the City of Cleveland;

Thence along said Corporation line and the Southeastern line of said lands of Cleveland Electric Illuminating and the Northeasterly projection thereof, bearing North 28 degrees 52 minutes 58 seconds East, a distance of 93.37 feet to a point on the Southeastern line of lands conveyed to the United States of America by deed dated August 30, 1990 as recorded in Volume 90–5269, Page 42 of Cuyahoga County Recorder's Records, also being a point on the centerline of the aforesaid original Cedar Point Road (vacated), as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found South 29 degrees 22 minutes 57 seconds East, a distance of 0.12 feet;

Thence along the centerline of original Cedar Point Road (vacated) and a Southern line of lands conveyed to the United States of America by Recorded in Volume 9491, Page 678 of Cuyahoga County Recorder's Records, bearing North 86 degrees 18 minutes 46 seconds East, a distance of 55.16 feet to an angle point therein as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found South 74 degrees 16 minutes 18 seconds West, a distance of 1.17 feet;

Thence continuing along the centerline of original Cedar Point Road (vacated) and a Southern line of lands conveyed to the United States of America (Volume 9491, Page 678), bearing North 35 degrees 18 minutes 46 seconds East, a distance of 75.14 feet to a point thereon, also being a point on the Eastern Right-of-Way line of Cedar Point Road, also being a point on the Northern Corporation line of the City of Cleveland, as witnessed by a 5/8-inch pin with I.D. cap marked C.H.I.A. found south 45 degrees 27 minutes 20 seconds West, a distance of 4.33 feet;

Thence continuing along said Corporation line and the Eastern Right-of-Way line of Cedar Point Road and along a tangent curve to the left, the long chord of which bears North 37 degrees 35 minutes 44 seconds East for a distance of 315.86 feet, having a radius of 550.24 feet, and an arc length of 320.37 feet to a point of tangency, as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found South 25 degrees 50 minutes 03 seconds West, a distance of 0.32 feet;

Thence continuing along said Corporation line and the Eastern Right-of-Way line of Cedar Point Road, bearing North 20 degrees 54 minutes 57 seconds East, a distance of 50.61 feet to a point thereon, also being a point on the centerline of original Cedar Point Road (vacated) and a Southern line of the aforesaid lands of the United States of America (Volume 9491, Page 678), as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found North 22 degrees 20 minutes 07 seconds East, a distance of 3.62 feet;

Thence along the centerline of original Cedar Point Road (vacated) and a Southern line of said lands of the United States of America (Volume 9491, Page 678), bearing North 35 degrees 18 minutes 46 seconds East, a distance of 22.23 feet to an angle point therein as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found South 57 degrees 49 minutes 09 seconds West, a distance of 2.23 feet;

Thence continuing along the centerline of original Cedar Point Road (vacated) and a Southern line of said lands of the United States of America (Volume 9491, Page 678), bearing North 00 degrees 39 minutes 46 seconds East, a distance of 15.97 feet to a point on the Northern Corporation line of the City of Cleveland and the Eastern Right-of-Way line of Cedar Point Road, as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found South 20 degrees 16 minutes 13 seconds West, a distance of 5.32 feet;

Thence along the said Northern Corporation line and the Eastern Right-of-Way line of Cedar Point Road, bearing North 20 degrees 54 minutes 57 seconds East, 74.39 feet to a point of curvature thereon, as witnessed by a 5/8-inch iron pin with I.D. cap marked C.H.I.A. found North 49 degrees 57 minutes 54 seconds West, a distance of 0.24 feet;

Thence continuing along the said Northern Corporation line and the Eastern Right-of-Way line of Cedar Point Road and along a tangent curve to the right, the long chord of which bears North 31 degrees 38 minutes 58 seconds East for a distance of 141.13 feet, having a radius of 378.89 feet, and an arc length of 141.96 feet to a point thereon, also being a point on the Northern terminus of Cedar Point Road and the Principal Place of Beginning and containing 1.2056 Acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Description of Parcel B Being Released (0.0790 Acres)

Situated in the City of Brook Park, County of Cuyahoga and State of Ohio, known as being part of Original Middleburg Township Lot No. 3, Section No. 21, also being part of the original Cedar Point Road (vacated), also part of lands conveyed to the City of Cleveland by deed dated November 15, 1982 as recorded in Volume 15676, Page 651 of Cuyahoga County Recorder's Records, being more fully described as follows:

Commencing at an iron pin in a monument box found and used at the intersection of the centerline of Cedar Point Road, having a 60-foot Right-of-Way, with the centerline of Lucille Avenue, having a 60-foot Right-of-Way, also being a point on the Western line of said Lot No. 3;

Thence along the centerline of said Cedar Point Road, bearing South 89 degrees 09 minutes 47 seconds East, a distance of 1206.17 feet to an iron pin in a monument box found and used at a point of curvature in the centerline of Cedar Point Road;

Thence along the centerline of said Cedar Point Road and along a tangent curve to the left, the long chord of which bears North 55 degrees 52 minutes 14 seconds East for a distance of 596.21 feet, having a radius of 520.24 feet and an arc length of 634.87 feet to a point of tangency therein, as witnessed by a 5/8-inch iron pin without I.D. cap, found South 04 degrees 30 minutes 28 seconds East, a distance of 0.45 feet;

Thence continuing along the centerline of Cedar Point Road, bearing North 20 degrees 54 minutes 57 seconds East, a distance of 161.51 feet to a point of curvature therein, as witnessed by a 1/2-inch iron pin without I.D. cap, found North 59 degrees 29 minutes 39 seconds West, a distance of 0.20 feet;

Thence continuing along the centerline of Cedar Point Road and along a tangent curve to the right, the long chord of which bears North 31 degrees 44 minutes 19 seconds East for a distance of 153.56 feet, having a radius of 408.89 feet and an arc length of 154.48 feet to a point on the Northern terminus of Cedar Point Road;

Thence along the Northern terminus of Cedar Point Road, bearing North 45 degrees 11 minutes 14 seconds West, a distance of 30.02 feet to a point on the Western Right-of-Way line of Cedar Point Road and the Principal Place of Beginning of the parcel herein described;

Thence along the Western Right-of-Way of Cedar Point Road and along a non-tangent curve to the left, the long chord of which bears South 36 degrees 32 minutes 30 seconds West for a distance of 94.40 feet, having a radius of 438.89 feet, and an arc length of 94.59 feet to a point thereon, also being a point on the centerline of original Cedar Point Road (vacated) and a Southern line of lands conveyed to the United States of America by deed Recorded in Volume 9491, Page 678 of Cuyahoga County Recorder's Records;

Thence continuing along said centerline of original Cedar Point Road (vacated) and a Southern line of lands

conveyed to the United States of America (Volume 9491, Page 678) bearing North 00 degrees 39 minutes 46 seconds East, a distance of 130.20 feet to an angle point therein;

Thence co-linear to the aforesaid Northern terminus of Cedar Point Road, bearing South 45 degrees 11 minutes 14 seconds East, a distance of 77.11 feet to a point on the Western Right-of-Way line of Cedar Point Road; and the Principal Place of Beginning and containing 0.0790 acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Issued in Romulus, Michigan on May 21, 2007.

John L. Mayfield,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–2940 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comment about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 23, 2007, vol. 72, no. 56, page 13855. 14 CFR Part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel Clubs.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification and Operation FAR 125.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0085.

Form(s): There are no forms associated with this collection.

Affected Public: An estimated 163 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 181 hours per response.

Estimated Annual Burden Hours: An estimated 29,445 hours annually.

Abstract: Part A of Subtitle VII of the Revised Title 49 United States Code authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR Part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel Clubs. Information shows compliance and the applicant's eligibility.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates 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.

Issued in Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2941 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Certification Procedures for Products and Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected is used to determine compliance and applicant eligibility.

DATES: Please submit comments by August 14, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification procedures for products and parts.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0018.

Forms(s): 8110–12, 8130–1, 8130–3, 8130–6, 8130–9, 8130–12.

Affected Public: A total of 5100 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 8.6 hours per response.

Estimated Annual Burden Hours: An estimated 44,101 hours annually.

Abstract: 14 CFR part 21 prescribes certification standards for aircraft, aircraft engines, propellers, products, and parts. The information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners.

ADDRESSES: Send comments to the FAA at the following address: Mr. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

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 estimates 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.

Issued in Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2942 Filed 6–11–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, Vol. 72, No. 57, page 14163–14164. Data collected serves as input to the FAA revenue passenger database which is used to classify airports and allocate Airport Improvement Program (AIP) funds to airports as required by law.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0067.

Forms(s): 1800–31.

Affected Public: An estimated 302 respondents.

Frequency: This information is collected annually.

Estimated Average Burden per Response: Approximately 1.5 hours per response.

Estimated Annual Burden Hours: An estimated 453 hours annually.

Abstract: The survey is restricted to air taxi/commercial operators that are subject to the passenger transportation tax. Data collected serves as input to the FAA revenue passenger database which is used to classify airports and allocate Airport Improvement Program (AIP) funds to airports as required by law.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates 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.

Issued on Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2943 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, vol. 72, no. 57, page 14164. Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, Part 39.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0056.

Form(s): There are no forms associated with this collection.

Affected Public: An estimated 1,120 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 2,800 hours annually.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and send via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates of the burden of the proposed information collection; ways to enhanced 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.

Issued in Washington, DC on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2944 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, vol. 72, no. 57, page 14165. 49 USC Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect

navigable airspace, air commerce, or air capacity.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0001.

Form(s): 7460–1, 7460–2.

Affected Public: An estimated 70,400 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 12.44 minutes per response.

Estimated Annual Burden Hours: An estimated 14,592 hours annually.

Abstract: 49 U.S.C. Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR Part 77.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates 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.

Issued in Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2945 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federation Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, Vol. 72, No. 57, page 14164. The information collected is used to determine compliance and applicant eligibility with 14 CFR Part 61.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Pilots and Flight Instructors.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0021.

Form(s): 8710–1.

Affected Public: An estimated 143,000 respondents.

Frequency: This information is collected annually.

Estimated Average Burden Per Response: Approximately 2.15 hours per response.

Estimated Annual Burden Hours: An estimated 308,150 hours annually.

Abstract: Title 49, United States Code, Section 44703 provides the legal basis for 14 CFR subchapter D part 61. Part 61 prescribes the requirements for pilots, flight instructors and ground instructors. The information collected on FAA Form 8710–1 is used to determine compliance and applicant eligibility.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates 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.

Issued in Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2946 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, Vol. 72, No. 57, page 14163. This is a labeling requirement to put the manufacture date and pollution compliance status on engine identification plates.

DATES: Please submit comments by July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emissions Requirements for Turbine Engine Powered Airplanes (FAR 34).

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0508.

Forms(s): There are no forms associated with this collection.

Affected Public: An estimated 1200 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: This is a labeling requirement to put the manufacture date

and pollution compliance status on engine identification plates. It is intended to minimize the effort in determining whether a turbojet engine may legally be installed and operated on an aircraft in the United States.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 estimates 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.

Issued in Washington, DC, on June 8, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–2947 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—Implementation of Previously Assigned Task Item

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of implementation of previously assigned task item for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA has assigned the Aviation Rulemaking Advisory Committee (ARAC) to disposition certain technical comments through the Transport Airplane and Engine Issues Group (TAEIG) and its Design for Security Harmonization Working Group (DSHWG). This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Transport Airplane Directorate (ANM–115), Northwest Mountain Region Headquarters, 1601 Lind Ave., SW., Renton, WA 98055–4056; telephone: (425) 227–2136; fax: 425–227–1320 e-mail: *jeff.gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities for aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

In a tasking issued on October 20, 1999, (64 FR 57921, Oct. 27, 1999), the FAA assigned ARAC to provide advice and recommendations relative to the following issue:

Implementation of International Civil Aviation Organization (ICAO), Rules from Amendment 97 to Annex 8, Concerning Design for Security.

ARAC Acceptance of Task

ARAC accepted the task, and the TAEIG chose to establish the Design for Security Harmonization Working Group. As a part of that task, ARAC agreed that ''If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.''

This notice is to inform the public that the following specific technical comments are assigned to the DSHWG:

- Consideration of structural deflections for system integrity
- Flight/dispatch regimes under which smoke protection capability is required
- System separation requirements in relation to other regulations (*i.e.*, Sections 25.729(f) and 25.903(d))
- Definition of the system separation distance measurement
- Definition of object size for interior search

Issued in Washington, DC, on June 6, 2007.

Eve Taylor Adams,

Acting Director, Office of Rulemaking.

[FR Doc. E7–11606 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–22]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 5, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–28111 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide.

Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 6, 2007.

Eve Taylor Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–28111.

Petitioner: Honolulu Community College.

Section of 14 CFR Affected: 14 CFR 141.77(c)(1).

Description of Relief Sought: Honolulu Community College (HCC) requests relief from § 141.77(c)(1) to the extent necessary to allow HCC students to transfer all previous HCC collegiate pilot flight experience and knowledge credit from the University of North Dakota to the new part 141 certificate provider, Galvin Flying Services, Inc.

[FR Doc. E7–11592 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2006–24646]

Union Pacific Railroad Company; Extension of Comment Period

The Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA) seeking relief from the requirements of the Rules, Standards and Instructions found in Title 49 Code of Federal Regulations (CFR) § 236.586, Daily or after-trip test. Specifically, UP is seeking to change the administration of the first sentence in paragraph (a) from ''intervals of not more than 2 months'' to ''intervals of not more than 92 days'' for all cab signal devices on locomotives operated by UP. This waiver application is identified as Docket Number FRA–2006–24646.

FRA issued a public notice seeking comments from interested parties on UP's petition. See 71 FR 36166; June 23, 2006. FRA also held a public hearing on this proposal on May 31, 2007, and extended the comment period to June 10, 2007. See 72 FR 19579; April 18, 2007. At the May 31 hearing, FRA requested that UP submit additional information to the docket to support its waiver application. In order to give all interested parties time to comment on the additional information, FRA is extending the comment period to July 2, 2007.

All communications concerning this waiver petition should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2006–24646) and may be submitted by one of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic site;

Fax: 202–493–2251;

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or

Hand Delivery: 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. Documents in the public docket are also available for review and copying on the Internet at the docket facility Web site at *http://dms.dot.gov*.

Issued in Washington, DC on June 8, 2007.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. E7–11547 Filed 6–14–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Termination; Fairmont Specialty Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006 at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds was terminated effective May 31, 2007. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2006 Revision, to reflect this change.

With respect to any bonds currently in force with the above listed company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 4, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07–2956 Filed 6–14–07; 8:45am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC of the four entities identified in this notice pursuant to Executive Order 13382 is effective on June 8, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On June 8, 2007, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated four entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees follows:

1. FAJR INDUSTRIES GROUP (a.k.a. FADJR INDUSTRIES GROUP; a.k.a. IFP; a.k.a. INDUSTRIAL FACTORIES OF PRECISION-MACHINERY; a.k.a. INSTRUMENTATION FACTORIES OF PRECISION MACHINERY; a.k.a. INSTRUMENTATION FACTORY PLANT; a.k.a. MOJTAME SANTY AJZAE DAGHIGH; a.k.a. NASR INDUSTRIES GROUP), P.O. Box 1985–777, Tehran, Iran [NPWMD]
2. FARAYAND TECHNIQUE (a.k.a. FARAYAND TECHNIC), End of North Karegar Avenue, Shomali, Tehran, Iran; P.O. Box 14155–1339, Tehran, Iran; Esfahan, Iran; Isfahan, Iran [NPWMD]
3. PARS TRASH COMPANY (a.k.a. PARS TRASH; a.k.a. PARS TERASH; a.k.a. PARS TARASH), 33 Fifteenth (15th) Street, Seyed-Jamal-Eddin-Assad Abadi Avenue, Tehran, Iran [NPWMD]
4. MIZAN MACHINE MANUFACTURING GROUP (a.k.a. 3MG), P.O. Box 16595–365, Tehran, Iran [NPWMD]

Dated: June 8, 2007.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–11593 Filed 6–14–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Postponement of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Postponement of Closed Meeting of Art Advisory Panel.

SUMMARY: The closed meeting of the Art Advisory Panel which was to be held in Washington, DC on June 20, 2007 has been postponed and will be rescheduled for Fall 2007. (The date to be determined.)

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

Karen S. Ammons,

Deputy Chief, Appeals.

[FR Doc. E7–11612 Filed 6–14–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
June 15, 2007

Part II

Environmental Protection Agency

40 CFR Part 261

Expansion of RCRA Comparable Fuel Exclusion; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–HQ–RCRA–2005–0017; FRL–8324–2]

RIN 2050–AG24

Expansion of RCRA Comparable Fuel Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to expand the comparable fuel exclusion under the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) for fuels that are produced from hazardous waste but which generate emissions that are comparable to emissions from burning fuel oil when such fuels are burned in an industrial boiler. Such excluded fuel would be called emission-comparable fuel (ECF). ECF would be subject to the same specifications that currently apply to comparable fuels, except that the specifications for certain hydrocarbons and oxygenates would not apply. The ECF exclusion would be conditioned on requirements including: Design and operating conditions for the ECF boiler to ensure that the ECF is burned under the good combustion conditions typical for oil-fired industrial boilers; and conditions for tanks storing ECF which conditions are typical of those for storage of commercial fuels, and are tailored for the hazards that ECF may pose.

DATES: Comments must be received on or before August 14, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before July 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2005–0017, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of your comments to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). 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:* RCRA Docket, EPA Docket Center (2822T), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2005–0017. 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 comments include information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305P), Attention Docket ID No. EPA–HQ–RCRA–2005–0017, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Clearly mark the part or all of the information that you claim to be CBI. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the RCRA 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Hazardous Waste Minimization and Management Division, Office of Solid Waste, Mailcode: 5302P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8453; fax number: (703) 308–8433; e-mail address: *jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Action Apply to Me?

Categories and entities potentially affected by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that generates or combusts hazardous waste as defined in the proposed rule.	562	49	Waste Management and Remediation Services.
	327	32	Non-metallic Mineral Products Manufacturing.

Category	NAICS code	SIC code	Examples of potentially regulated entities
	325	28	Chemical Manufacturing.
	324	29	Petroleum and Coal Products Manufacturing.
	331	33	Primary Metals Manufacturing.
	333	38	Machinery Manufacturing.
	326	306	Plastic and Rubber Products Manufacturing.
	488, 561	49	Administration and Support Services.
	421	50	Scrap and waste materials.
	422	51	Wholesale Trade, Non-durable Goods, N.E.C.
	512, 541, 812	73	Business Services, N.E.C.
	512, 514, 541, 711	89	Services, N.E.C.
	924	95	Air, Water and Solid Waste Management.
	336	37	Transportation Equipment Manufacturing.
	928	97	National Security.
	334	35	Computer and Electronic Products Manufacturing.
	339	38	Miscellaneous Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in this proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

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

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** 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.

3. Docket Copying Costs:

You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are 15 cents/page.

4. How Do I Obtain a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the Worldwide Web (WWW). Following the Administrator's signature, a copy of this document will be posted on the WWW at *http://www.epa.gov/hwcmact.* This Web site also provides other information related to the NESHAP for hazardous waste combustors.

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Part One: Background and Summary

I. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

II. Background

A. What Is the Intent of This Proposed Rule?

Section 40 CFR 261.38 states that secondary materials (*i.e.*, materials that otherwise would be hazardous wastes) which have fuel value and whose hazardous constituent levels are comparable to those found in the fossil fuels which would be burned in their place are not solid wastes, and hence not hazardous wastes. We are proposing to amend the comparable fuel exclusion by expanding the exclusion to include fuels that are produced from a hazardous waste but which generate emissions when burned in an industrial boiler that are comparable to emissions from burning fuel oil. In other words, the fuels would be comparable from an emissions standpoint but not a physical standpoint. The revised rule would establish a new category of excluded waste-derived fuel called emission-comparable fuel (ECF).

The quantity of waste fuels excluded under this approach would increase substantially the amount of hazardous waste fuels that would eligible for exclusion from the RCRA hazardous waste regulations. Specifically, we estimate that approximately 13,000 tons per year of waste fuels are currently excluded under the existing comparable fuel exclusion, while we project that up to an additional 107,000 tons per year may be excluded under the exclusion being proposed today.

These additional hazardous secondary materials could be burned for energy recovery without imposing unnecessary regulatory costs on generators, primarily the manufacturing sector. However, the expanded comparable fuel exclusion may not substantially increase the amount of hazardous waste burned for energy recovery because high Btu wastes, even though not currently excluded from RCRA, are currently burned in industrial furnaces and incinerators for their fuel value. Nonetheless, continuing to regulate these waste-derived fuels as hazardous wastes would treat a potentially valuable fuel commodity (especially considering the increasing value of fuels) as a waste without a compelling basis.

B. Who Would Be Affected by This Proposed Rule?

Entities that generate, burn, and store ECF are potentially affected by this proposal. The basic structure of the proposal is that ECF is no longer a solid (and hazardous) waste, and hence that each of these entities would not be subject to subtitle C regulation when managing ECF. Thus, generators of hazardous waste fuels that meet the conditions of the ECF exclusion could manage these fuels without being subject to subtitle C regulation assuming that the management conditions are satisfied. Burners, which are limited to certain industrial boilers (including utility boilers), could burn ECF provided the boilers meet the design and operating conditions in the proposed rule, as discussed in Part II, Section II. Generators would benefit from lower operating costs because of lower (or eliminated) waste management fees and because these fuels would substitute for fuels which would otherwise be purchased. In addition, entities storing ECF would not be subject to subtitle C standards provided they satisfy the management conditions tailored to ECF, as discussed in Part Two, Section IV.

Commercial hazardous waste combustors that are currently managing waste fuels that qualify as ECF, on the other hand, might find themselves unable to continue to charge hazardous waste management fees for the excluded waste fuels. Consequently, commercial hazardous waste combustors might lose the waste management revenues for those diverted fuels and may need to meet their heat input requirements by using other waste fuels or fossil fuels.

C. What Is the Relationship Between the Proposed Rule and the Existing Exclusion for Comparable Fuel?

On June 19, 1998 (63 FR 33782 and § 261.38), EPA promulgated standards to exclude from the regulatory definition of solid waste certain hazardous waste-derived fuels that meet specification levels for hazardous constituents and physical properties that affect burning which are comparable to the same levels in fossil fuels. EPA's goal was to develop a comparable fuel specification which is useable by the regulated community, but assures that an excluded waste-derived fuel is similar in composition to commercially available fuel and therefore poses no greater risk than burning fossil fuel.

During the eight years that the comparable fuel exclusion has been part of the hazardous waste regulations, several stakeholders have pointed out that many hazardous wastes with fuel value do not satisfy the terms of the exclusion. Independently, in 2003, EPA began examining the effectiveness of the current comparable fuel program as part of an effort to promote the energy conservation component of the Resource Conservation Challenge [1] to determine whether other hazardous wastes could be appropriately excluded as comparable fuel.

As part of this effort, we contacted the American Chemistry Council (ACC) in early 2003 to determine how much waste is currently excluded as comparable fuel and whether there were additional quantities of other high Btu wastes that could potentially be considered comparable fuel. ACC conducted a survey of its members and provided results to EPA in late 2003 indicating that approximately 13,000 tons per year of waste fuels are currently excluded, but that approximately 190,000 tons per year of additional waste fuels could potentially be excluded under revisions to the exclusion.[2]

Therefore, ACC recommended that EPA consider approaches to address the following barriers perceived as excluding additional quantities of waste fuels:

- *Analytic Issues:* High analysis cost and matrix interferences hamper meeting the detection limit requirements for nondetected analytes in many waste fuel matrices.
- *Over-Rigid Specifications:* Wastes containing nonhalogenated organics and oxygenates do not result in emissions greater than burning waste fuel meeting the specification if the combustor operates under good combustion conditions.
- *Blending:* The current exclusion bans blending to meet hazard constituent specifications. Flexibility is needed on blending of streams containing low levels of constituents, such as chromium and manganese attributable to corrosion from stainless steel vessels and pipes.

1. What Modifications to the Comparable Fuel Exclusion May Be Warranted?

We are proposing in this action to expand the exclusion for comparable fuel to establish a new category of excluded fuel—emission-comparable fuel (ECF). This proposal would exclude waste fuels that generate emissions, when burned in an industrial boiler, which are comparable to emissions from burning fuel oil. ECF would be subject to the same hazardous constituent and other specifications in Table 1 to § 261.38 that currently apply to comparable fuels, except that the specifications for certain hydrocarbons and oxygenates would not apply. The exclusion would be based on the rationale that ECF has substantial fuel value, that the hydrocarbon and oxygenate constituents no longer subject to a specification add fuel value, and that emissions from burning ECF in an industrial boiler operating under good combustion conditions are likely not to differ from emissions from burning fossil fuels under those same conditions. As a result, the current specifications limiting the hydrocarbons and oxygenates appear to be unnecessary.

The exclusion would be conditioned on the ECF being burned and stored under certain conditions, including: (1) Design and operating conditions for the ECF boiler that ensure that the ECF is burned under the good combustion conditions typical for oil-fired industrial boilers; and (2) conditions for storage in tanks which are comparable to those for storage of fuels and organic liquids and which are tailored for the hazards that ECF may pose given that ECF can have higher concentrations of certain hydrocarbons and oxygenates than fuel oil and gasoline.

We are not proposing revisions to the comparable fuel exclusion to address the analytical and blending recommendations raised by ACC.

a. Why Are We Not Proposing Revisions To Address Analytic Concerns? The specifications in Table 1 to § 261.38 for volatile organic compounds that were not detected in fuel oil or gasoline were based on the low levels of detection achievable for fuel oil rather than the much higher levels of detection achievable for gasoline. Given that only benzene, toluene, and naphthalene were detected, EPA used this approach for most of the volatile organic compounds. EPA acknowledged this deviation from establishing the specification for nondetected compounds as the highest level of detection in a benchmark fuel and explained that the levels of detection for volatile compounds in gasoline were inflated because of matrix effects. ACC suggested that EPA consider the fact that many waste fuels may pose the same matrix effects as gasoline, such that the fuel oil-based specifications would not be reasonably achievable.

We believe that it would not be appropriate to consider increasing the specifications for all volatile organic compounds and base them on the higher levels of detection in gasoline rather than fuel oil levels of detection because most of the compounds would simply not be expected to be found in fuel oil or gasoline. Rather, only certain hydrocarbons would be expected to be in these fuels. We could potentially also consider oxygenates, however, because they are within a class of compounds that are added to fuels to enhance combustion. It appeared, however, that this revision would not likely result in additional hazardous waste fuel being conditionally excluded. There were very few, if any, waste fuels that meet the specifications for all volatile compounds, except for the enumerated hydrocarbons and oxygenates, and that also could meet revised, higher specifications for the hydrocarbons and oxygenates based on the levels of detection in gasoline. Consequently, we are not pursuing this approach further but, nonetheless, solicit comment on such an approach.

b. Why Are We Not Proposing Revisions To Address Blending Concerns? A condition of the existing comparable fuel exclusion is that blending to meet the specification (except for viscosity) is prohibited to preclude dilution to avoid treatment.[3] ACC noted that waste fuels often contain incidental contamination of metals, such as chromium and manganese from corrosion of stainless steel vessels and pipes, and that blending to meet the specifications for

[1] *See http://www.epa.gov/epaoswer/osw/conserve/strat-plan/strat-plan.htm#rccplan.*

[2] Letter from American Chemistry Council (Carter Lee Kelly, Leader, Waste Issues Team, and Robert A. Elam, Director, Regulatory Affairs, Waste Issues Team) to Robert Springer and Matt Hale, USEPA, dated November 24, 2003.

[3] See 63 FR at 33795, and existing § 261.38(c)(3–4).

low levels of metals appears reasonable. We believe that blending to meet the specifications for metals is explicitly prohibited because it would be inconsistent with the section 3004(m) hazardous waste treatment provisions (which, although not directly applicable, articulate important overall statutory objectives) which require hazardous constituents to be removed or destroyed by treatment, not diluted. See 63 FR at 33795.

We believe, however, that blending to meet the specification for organic compounds that may be present in fuel oil or gasoline—hydrocarbons—or that are within a class of compounds that are added to fuels to enhance combustion—oxygenates—could be considered. These compounds would not be diluted to avoid treatment; they would still be treated by combustion. However, it appears that there were very few, if any, additional waste fuels that would be excluded under such a blending provision. Nonetheless, we solicit comment on such an approach and its applicability to additional waste fuels.

2. How Has EPA Involved Stakeholders in Discussions Regarding Potential Revisions to the Comparable Fuel Exclusion?

On December 15, 2005, EPA convened a public meeting of stakeholders to discuss potential revisions to the comparable fuel exclusion under 40 CFR 261.38.[4] Meeting notes are available in the docket for this rulemaking.[5] Participants in the stakeholder meeting raised several issues during the meeting and our responses are included in the meeting notes. In addition, several participants submitted written comments after the meeting. These comments and our responses are available in the docket to today's proposal.[6]

III. Summary of the Proposed Rule

Today's proposed rule would expand the comparable fuel exclusion by conditionally waiving the specifications for certain hydrocarbons and oxygenates listed in Table 1 to § 261.38. This excluded waste fuel would be called emission-comparable fuel. We are also proposing to clarify the regulatory status of existing comparable fuel that no longer meets the conditions of the exclusion.

A. What Are the Conditions for Exclusion of Emission-Comparable Fuel (ECF)?

ECF is a fuel derived from hazardous waste but which would be excluded from the RCRA hazardous waste regulations if it meets prescribed specifications and management conditions. The ECF specifications would be the same as those that are applicable to comparable fuel, except the specifications for particular hydrocarbons and oxygenates would not apply. See proposed § 261.38(a)(2). The exclusion would apply from the point that ECF meets the specifications.

Special conditions of the exclusion specific to ECF would include the following design and operating conditions for the ECF burner: (1) The burner must be a watertube steam boiler other than a stoker-fired boiler; (2) carbon monoxide (CO) must be monitored continuously, must be linked to an automatic ECF feed cutoff system, and must not exceed 100 ppmv on an hourly rolling average (corrected to 7% oxygen); (3) the boiler must fire at least 50% primary fuel on a heating value or volume basis, whichever results in a higher volume of primary fuel, and the primary fuel must be fossil fuel or tall oil with a heating value not less than 8,000 Btu/lb; (4) the boiler load must be 40% or greater; (5) the ECF must have an as-fired heating value of 8,000 Btu/lb or greater; (6) ECF must be fired into the primary fuel flame zone; (7) the ECF firing system must provide proper atomization; and (8) if the boiler is equipped with an electrostatic precipitator (ESP) or fabric filter (FF) and does not fire coal as the primary fuel, the combustion gas temperature at the inlet to the ESP or FF must be continuously monitored, must be linked to the automatic ECF feed cutoff system, and must not exceed 400 °F on an hourly rolling average. See proposed § 261.38(c)(2). (Please note that we specifically request comment on these proposed conditions, as discussed later.) The principal conditions that would apply to ECF boilers—waterwall steam boiler, low CO, burning high Btu primary fuel that is properly atomized, operating at boiler loads above 40%—reflect design and operating conditions typical for oil-fired industrial boilers that operate under good combustion conditions.

In addition, ECF must be stored in tanks, tank cars, or tank trucks. See proposed § 261.38(c)(1). These tank systems, tank cars, and tank trucks would be excluded from regulation if they meet conditions similar to those which apply to fuel oil (the product most analogous to ECF), along with additional conditions necessary to minimize the potential for releases to the environment accounting for the differences between ECF and fuel oil. These include: (1) Certain provisions of the Spill Prevention, Control, and Countermeasures (SPCC) requirements applicable to oil under §§ 112.2, 112.5, 112.7, and 112.8; (2) secondary containment and leak detection requirements for tank systems, including use of liners, vaults, or double-walled tanks; (3) preparedness and prevention, emergency procedures, and response to release provisions adopted from requirements applicable to tank systems that store hazardous waste, and (4) fugitive air emission technical controls adopted from Subpart EEEE, Part 63, for organic liquids distribution (which would apply not only to any hazardous air pollutants among the oxygenates and hydrocarbons, but also would apply to the 11 oxygenates for which there would be no specification in this proposed rule and which are hazardous constituents under RCRA having significant vapor pressure but which are not hazardous air pollutants under the CAA). Underground tanks storing ECF are subject to the applicable requirements of 40 CFR Part 280. A further condition of the exclusion is that the generator must document in the waste analysis plan how precautions will be taken to prevent mixing of ECF and other materials which could result in adverse consequences from incompatible materials. In addition, to be excluded, ECF would need to meet all of the conditions applicable to existing comparable fuel, including: (1) The specifications under Table 1 to 261.38, except for the specifications for certain hydrocarbons and oxygenates; (2) prohibition on blending to meet the specifications, except for viscosity; [7] (3) notifications to state RCRA and Clean Air Act (CAA) Directors and public notification; (4) waste analysis plans; (5) sampling and analysis conditions; (6) prohibition on speculative accumulation; (7) recordkeeping; (8)

[4] See e-mail from Jim Berlow, USEPA, to Jim Pew, Earthjustice; Melvin Keener, Coalition for Responsible Waste Incineration; David Case, Environmental Technology Council; Michael Benoit, Cement Kiln Recycling Coalition; Barbara Simcoe, Association of State and Territorial Solid Waste Management Officials; and Robert Elam, American Chemistry Council, dated November 23, 2005.

[5] See memorandum from Bob Holloway, USEPA, to Docket Number RCRA 2005–0017, entitled ''Meeting Notes—Comparable Fuel Stakeholder Meeting on Dec. 15, 2005,'' dated January 4, 2006.

[6] USEPA, ''Response to Comments on the December 15, 2005 Stakeholder Meeting Regarding Expanding the Comparable Fuel Exclusion,'' May 2007.

[7] ECF must have a heating value of 5,000 Btu/lb or greater as-generated (or after bona fide treatment), but must have a heating value of 8,000 Btu/lb, as fired. Thus, ECF with an as-generated heating value below 8,000 Btu/lb may be blended with other fuels to achieve a heating value of 8,000 Btu/lb.

burner certification to the generator; and (9) ineligible waste codes.

ECF that has lost its exclusion because of failure to satisfy a condition of the exclusion must be managed as a hazardous waste from the point of ECF generation.[8] In addition, ECF that is spilled or leaked and cannot be burned under the conditions of the exclusion is a waste (it is a hazardous waste if it exhibits a characteristic of hazardous waste or if the ECF were derived from a listed hazardous waste) and must be managed in accordance with existing federal and state regulations. Furthermore, if an ECF tank system ceases to be operated to store ECF product, but has not been cleaned by removing all liquids and accumulated solids within 90 days of cessation of ECF storage operations, the tank system would become subject to the RCRA subtitle C hazardous waste regulations.[9] (This is the same principle that applies to any product storage unit when it goes out of service. See § 261.4(c).) Liquids and accumulated solids removed from a tank system that ceases to be operated for storage of ECF product are waste (they are hazardous wastes if they exhibit a characteristic of hazardous waste or if the ECF were derived from a listed hazardous waste).

B. What Changes Is EPA Proposing to the Conditions for Existing Comparable Fuel?

The proposed rule would restructure the current conditions for comparable fuel (and syngas fuel) to make the regulatory language more readable given that the regulation must accommodate the proposed exclusion for ECF. Consequently, we are redrafting the entire section for clarity. In addition, we are making technical corrections to several provisions of the rule.[10] We regard these language changes as purely technical, and thus will accept comment only on whether the suggested language change expresses the current meaning of the provision. We are not reexamining, reconsidering, or otherwise reopening these provisions for comment.

We are, however, proposing to amend several provisions that apply to comparable fuel for the same reasons that we are proposing to apply the amended provisions to ECF. We specifically request comment on whether these clarifications and conforming amendments are appropriate:

- We are proposing to clarify the consequences of failure to satisfy the conditions of the existing comparable fuel exclusion. The material must be managed as hazardous waste from the point of generation. In addition, we are proposing to clarify that excluded fuel that is spilled or leaked and that no longer meets the conditions of the exclusion must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste or if it was derived from a listed hazardous waste when the exclusion was claimed. See proposed § 261.38(d).

- We are proposing to clarify the status of tanks that cease to be operated as comparable fuel storage tanks. The tank system becomes subject to the RCRA hazardous waste facility standards if not cleaned of liquids and accumulated solids within 90 days of ceasing operations as a comparable fuel tank. In addition, we are proposing to clarify that liquids and accumulated solids removed from the tank after the tank ceases to be operated as a comparable fuel product tank must be managed as hazardous waste if they exhibit a characteristic of hazardous waste or if they were derived from a listed hazardous waste when the exclusion was claimed. See proposed § 261.38(b)(13).

- We are proposing to waive the RCRA closure requirements for tank systems that are used only to store hazardous wastes that are subsequently excluded as comparable fuel. See proposed § 261.38(b)(14).

- We are proposing to clarify the regulatory status of boiler residues, including bottom ash and emission control residue. Burning excluded fuel that was derived from a listed hazardous waste does not subject boiler residues to regulation as derived-from hazardous waste. See § 261.38(b)(12).

- We are proposing that the one-time notice by the generator to regulatory officials include an estimate of the average and maximum monthly and annual quantity of waste for which an exclusion would be claimed.[11] See proposed § 261.38(b)(2)(i)(D).

Part Two: Rationale for the Proposed Rule

I. What Is the Rationale for Excluding Emission-Comparable Fuel From the Definition of Solid Waste?

Emission-comparable fuel (ECF) is a fuel derived from hazardous waste, but which would be excluded from RCRA hazardous waste regulation if it meets prescribed specifications and management conditions. The ECF specifications would be the same as those that currently apply to existing comparable fuel, except the specifications for particular hydrocarbons and oxygenates would not apply. See proposed § 261.38(a)(2).[12]

The exclusion would be based on the rationale that ECF has fuel value, that the hydrocarbon and oxygenate constituents no longer subject to a specification themselves have fuel value, and that emissions from burning ECF in an industrial boiler operating under good combustion conditions are likely not to differ from emissions from burning fossil fuels under those same conditions. Emissions from burning ECF in an industrial boiler operating under good combustion conditions would be comparable to emissions from burning fuel oil in an industrial boiler operating under the same good combustion conditions because operating a boiler under good combustion conditions, evidenced by carbon monoxide (CO) emissions below 100 ppmv (on an hourly rolling average), assures the destruction of organic compounds generally to trace levels, irrespective of the type or concentration of the organic compound in the feed.[13] As

[8] Please note that we request comment on whether the final rule should include a ''reasonable efforts'' provision that would provide that the failure of an off-site, unaffiliated burner to meet the proposed conditions or restrictions of the exclusion would not mean the material was considered waste when handled by the generator, as long as the generator can adequately demonstrate that he has made reasonable efforts to ensure that the material will be managed by the burner under the conditions of the exclusion. See discussion in Part Two, Section V.B of the preamble.

[9] If the tank is used to actively accumulate hazardous waste after being taken out of service as an ECF product tank, the tank may be eligible for the provisions under § 262.34 that waive the permit requirements for generator tanks that accumulate hazardous waste for not more than 90 days.

[10] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, dated January 10, 2007.

[11] Providing an estimate of excluded quantities would help regulatory officials establish inspection and monitoring priorities. This requirement was an oversight when the exclusion was initially promulgated. We required the burner to issue a public notice that included this information (see existing § 261.38(c)(1)(ii)(D)), but we inadvertently did not require the generator who claims the exclusion to provide this information in his notice to regulatory officials.

[12] Table 1 to § 261.38 provides specifications for 37 hydrocarbons and oxygenates. For ECF, the specifications would not apply for those compounds, except for PAHs and naphthalene, as discussed in Part Two, Section III, of the text. In addition, there would be firing rate restrictions for ECF that contained more than 2% benzene or acrolein.

[13] This assumes that fuels are fired into the flame zone, thus avoiding total ignition failure. If a waste fuel were inadvertently fired out of the flame zone, the fuel may not even partially combust. If this were to happen, CO levels could be low even though organic emissions could be high. ECF boilers would be required to fire ECF into the primary fuel flame zone. Also see USEPA, ''Draft Technical Support

Continued

hydrocarbons are oxidized during combustion, eventually (ideally) to carbon dioxide and water, CO is formed just prior to complete oxidation to carbon dioxide. Because CO is difficult to oxidize, it is the rate-limiting step in the oxidation process. Thus, low CO levels indicate good combustion and low levels of organic compounds.

EPA has discretion to classify such material as a fuel product, and not as a waste. See generally *Safe Foods and Fertilizer* v. *EPA*, 350 F. 3d 1263, 1269–71 (D.C. Cir. 2004) (secondary materials physically comparable to virgin products which would be used in their place, or which pose similar or otherwise low risks when used in the same manner as the virgin product, need not be considered ''discarded'' and hence need not be classified as solid wastes). Given that ECF (including the hydrocarbon and oxygenate portion) would have legitimate energy value and that emissions from burning ECF are comparable to fuel oil when burned in an industrial boiler under the good combustion conditions typical of such boilers, classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating a risk from burning greater than those posed by fossil fuel. Under these circumstances, EPA can permissibly classify ECF as a non-waste.

The conditional exclusion would be an exclusion only from the RCRA subtitle C regulations, and not from the emergency, remediation and information-gathering sections of the RCRA statute [sections 3007, 3013, and 7003]. This is consistent with the principle already codified for other excluded hazardous secondary materials—that the exclusion is only from the RCRA regulatory provisions, and not from these statutory authorities. See § 261.1(b). We are restating this principle here in the interest of clarity, not to reopen the issue. The legal basis for the distinction of the Agency's authority under these provisions is that they use the broader statutory definition of solid waste (and hazardous waste, as well) and so need not (and should not) be read as being limited by the regulatory definition. See, for example, 50 FR at 627. See also *Connecticut Coastal Fishermen's Assn.* v. *Remington Arms*, 989 F. 2d 1305, 1313–15 (2d Cir. 1993) (EPA may permissibly ascribe different definitions to the term ''solid waste'' for regulatory and statutory purposes).

Although ECF could have higher concentrations of particular hydrocarbons and oxygenates than the benchmark fossil fuels—fuel oil and gasoline—that EPA used to establish the specifications in Table 1 to § 261.38, higher levels of hydrocarbons and oxygenates in ECF do not imply that burning ECF for energy recovery constitutes waste management because: (1) Hydrocarbons naturally occur in virgin fuels [14] and oxygenates are a class of compounds that are added to virgin fuels to enhance combustion; [15] (2) the hydrocarbons and oxygenates have a heating value of 10,000 Btu/lb to 18,500 Btu/lb,[16] which is comparable to the range for virgin fuels (e.g., coal and fuel oil); and (3) the hydrocarbons and oxygenates produce emissions comparable to virgin fuels when burned under conditions typical of those under which virgin fuels are burned.

We note, however, that ECF can pose a greater hazard during storage than fuel oil given that ECF can contain higher concentrations of certain hazardous, volatile hydrocarbons and oxygenates. We are consequently proposing to condition the exclusion on certain storage conditions similar to those applicable to commercial products and commodities analogous to ECF, namely fuel oil and other commercial organic liquids. See discussion below in Part Two, Section IV.

In addition, we are proposing to condition the exclusion on requirements for the design and operation of the ECF burner to ensure that ECF is burned under the good combustion conditions typical of most fossil fuel boilers. See discussion below in Part Two, Section II. These conditions should ensure that emissions from burning ECF remain comparable to emissions from burning fossil fuels.

A. Why Would the Specifications Be Waived Only for Hydrocarbons and Oxygenates?

We are proposing not to apply the specifications for certain hydrocarbons and oxygenates, but are proposing to retain the specifications for metals and the other categories of organic compounds for which specifications are provided under § 261.38. We would not apply the specifications for these hydrocarbons [17] because: (1) It is reasonable to assume that these compounds may be present in fossil fuels (see 63 FR at 33791); and (2) when they are burned under the good combustion conditions typical for fossil fuel-fired boilers, emissions from burning these compounds would be comparable to emissions from burning fuel oil.

We also would not apply the specifications for the listed oxygenates because they are a class of organic compounds that are added to fuels to enhance combustion.[18] These compounds would burn cleanly under the good combustion conditions typical of a fuel oil-fired industrial boiler and would generate only trace or comparable levels of emissions.

It is appropriate to retain the specifications for metals since they do not contribute energy and are not destroyed during the combustion process. Given that the metal specifications in Table 1 to § 261.38 reflect levels that can be present in fuel oil, excess, noncontributing metals are ''along for the ride,'' suggesting discarding. Moreover, metals emissions would necessarily be higher than emissions from fuel oil if the metals specifications do not apply because oil-fired boilers typically lack optimized particulate control due to low metal content of commercially available fuel oils.

Also, it is appropriate to retain the specifications for the other categories of organic compounds listed under Table 1 to § 261.38—sulfonated organics, nitrogenated organics, and halogenated organic compounds. These organic compounds, for the most part, are not likely to be found in the benchmark fuels—fuel oil and gasoline—we used to establish the specifications. And, unlike oxygenates, these organic compounds are not within a class of compounds that are added to fossil fuels to enhance combustion. These hazardous compounds also would appear to be along for the ride when present at concentrations higher than benchmark

Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 5.

[14] We explained in the final comparable fuel rule that it is reasonable to assume that the Table 1 hydrocarbons that we did not detect in fuel oil or gasoline could in fact be present at levels up to the detection limit. See 63 FR at 33791.

[15] Examples of fuel oxygenates are: Ethanol; methyl tert-butyl ether (MTBE), tert-amyl methyl ether (TAME); diisopropyl ether (DIPE); ethyl tert-butyl ether (ETBE); tert-amyl alcohol (TAA); and tert-butyl alcohol (TBA). For further discussion, see USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 3.1.

[16] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.2.

[17] Please note, however, that we are proposing to retain the specifications for certain hydrocarbons: PAHs (polycyclic aromatic hydrocarbons) and naphthalene. See discussion in the text in Part Two, Section III.

[18] We acknowledge that oxygenates are added to fuels burned in internal combustion engines rather than fuels burned in industrial boilers. However, oxygenates burn cleanly—they do not contain halogens, sulfur, or nitrogen that would result in emissions of halogen acids and sulfur and nitrogen oxides.

fuels, and consequently their destruction via combustion can be viewed as waste management.

B. Do Available Data and Information Support a Comparable Emissions Finding?

We investigated whether emissions from burning ECF in an industrial boiler operating under prescribed good combustion conditions would be comparable to emissions from burning fuel oil in an industrial boiler operating under good combustion conditions. We evaluated organic emissions data from watertube steam boilers (other than stoker-fired boilers) burning hazardous waste and compared those emissions against emissions from oil-fired industrial boilers. In addition, we conducted two qualitative analyses of the risk that ECF emissions may pose: (1) Evaluation of RCRA risk assessments for watertube steam boilers burning hazardous waste to determine if organic emissions had been found to pose a hazard to human health and the environment; and (2) a limited comparative risk assessment for dioxin/furan emissions.

As discussed below, we believe that available data and information indicate that emissions from burning ECF under the proposed, prescribed conditions would be comparable to emissions from an oil-fired industrial watertube steam boiler operating under good combustion conditions.

1. Evaluation of Organic Emissions Data for Hazardous Waste Boilers

In the absence of emissions data from boilers burning ECF, we evaluated organic emissions data from watertube steam boilers burning hazardous waste and compared those emissions against emissions from oil-fired industrial boilers. Using hazardous waste boiler emissions as a surrogate for ECF boiler emissions is a reasonable worst-case because the exclusion would be conditioned on the ECF boiler operating under conditions relating to assuring good combustion conditions that are at least as stringent as those required of boilers burning hazardous waste.[19]

We obtained organic emissions data for 26 hazardous waste watertube steam boilers which data were generated during risk-burn testing required under RCRA omnibus authority codified at § 270.32(b)(2). EPA requires this testing as necessary on a site-specific basis to ensure that emissions are protective of human health and the environment. We have data for 28 test conditions for the 26 boilers that provide 175 detected measurements of organic compounds, where a measurement is a three-run set.[20] We also have data for hazardous organic compounds emitted from oil-fired industrial boilers. Those data were compiled in support of the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters promulgated under Part 63, Subpart DDDDD. See 69 FR 55218 (Sept. 13, 2004). We use oil-fired industrial boiler emissions data for comparison because fuel oil is the closest analogous fuel to ECF, and ECF could be burned only in industrial or utility boilers. See discussion below in Section II.B.1.

We have emissions data for both hazardous waste boilers and oil-fired industrial boilers for 26 hazardous organic compounds. We also have hazardous waste boiler emissions data for another 33 hazardous organic compounds for which we do not have oil-fired boiler emissions data for comparison. We discuss our investigation of these data below.

a. Hazardous Organic Compounds for Which We Have Both Hazardous Waste Boiler and Fuel Oil Boiler Emissions Data. We have both hazardous waste boiler and fuel-oil boiler emissions data for 26 hazardous organic compounds. The great majority of the hazardous waste boiler test condition averages for these compounds (150, or greater than 85%) were unequivocally comparable to fuel oil emissions—the hazardous waste emissions were below the oil emissions 95th percentile level. There were 24 test condition averages, however, that exceeded the oil emissions 95th percentile level for 10 compounds.[21] Nonetheless, we do not believe that these exceedances indicate that ECF emissions would be higher than oil-fired boiler emissions, as discussed below.

For 12 of the 24 exceedances, laboratory contamination of the sample was known or suspected. Specifically, for nine exceedances—six for dichloromethane, two for benzene, and one for toluene—the constituent being measured was found in the blank, while there were three additional exceedances for dichloromethane, a common lab contaminant that is frequently found in laboratory samples and in the environment. For one of these test conditions, the report indicated that dichloromethane is a common laboratory contaminant, implying that the data may be suspect. For the other two test conditions, laboratory contamination was not discussed in the test reports. Even if laboratory contamination were not an issue for these two tests, however, we note that these hazardous waste boilers were not operating under the conditions that are proposed for an ECF boiler. Both boilers were burning waste fuels with a heating value below the 8,000 Btu/lb minimum heating value that is proposed for ECF. In addition, it is unclear if one boiler was burning vent gas or natural gas as the primary fuel. ECF must be burned with at least 50% primary fuel that is fossil fuel. Operating under conditions less stringent than proposed for ECF boilers could result in higher emissions of organic compounds.

For seven exceedances, hazardous waste boiler emissions were at trace levels[22]—there was a *de minimis* increase in emissions. Test condition averages were below 8 µg/dscm for the exceedances for anthracene, benzo[a]pyrene, ethylbenzene, fluorine, 2-methlynaphthalene, and phenanthrene.

In addition, an exceedance for acetaldehyde was at an emissions level of 100 µg/dscm, while oil emission levels for acetaldehyde are virtually comparable at 70 µg/dscm. However, the hazardous waste boiler emissions for acetaldehyde were well below the 95th percentile emissions for natural gas boilers, 635 µg/dscm. This is relevant because ECF may be burned with natural gas as the primary fuel. Further,

[19] See discussion in Part Two, Section II, of the text describing the ECF boiler conditions. The CO controls for ECF boilers plus the requirement to fire ECF into the primary fuel flame zone are equivalent to the controls on organic emissions for hazardous waste boilers—CO controls and compliance with the 99.99% destruction and removal efficiency (DRE) standard. The other ECF boiler controls are more restrictive than controls that apply to hazardous waste boilers, but are appropriate to help assure that an ECF boiler operates under good combustion conditions given that ECF would be burned under a conditional exclusion absent a RCRA permit and the regulatory oversight typical for a RCRA hazardous waste combustor, and absent the extensive operating limits (e.g., combustion chamber temperature, maximum load) that are established subsequent to emissions testing to demonstrate compliance with a destruction and removal efficiency (DRE) standard.

[20] A test condition is normally comprised of three test runs conducted under identical (controllable) operating conditions.

[21] Please note that we have reanalyzed the oil-fired boiler emissions data to identify the 95th percentile benchmarks based on test condition averages, rather than test runs, based on comments submitted by one of the peer reviewers. As discussed in Part Two, Section VII, although the reanalysis resulted in several additional exceedances of the oil emissions benchmarks, our conclusion remains unchanged. It is reasonable to conclude that ECF emissions will be either generally comparable to oil emissions or at *de minimis* levels.

[22] Emissions of 8 µg/dscm for high molecular weight compounds such as these are equivalent to approximately 0.005 ppmv expressed as propane equivalents. Thus, these are *de minimis* concentrations considering that the hydrocarbon emission limit for boilers burning hazardous waste is 10 ppmv, expressed as propane equivalents. See § 63.1217(a)(5)(ii).

we note that the hazardous waste boiler was operating under conditions less stringent than proposed for ECF boilers—it was burning only 20% natural gas as the primary fuel, while it is proposed that ECF boilers fire at least 50% primary fuel. Thus, acetaldehyde emissions may be higher than they would have been if the boiler had the hot, stable flame that burning 50% natural gas (or fuel oil) would provide.

Finally, there were four exceedances for benzene that we nonetheless believe are comparable to fuel oil emissions. Three of the exceedances were below the highest fuel oil emission test run level of 200 µg/dscm, while the fourth exceedance was at a level of 260 µg/dscm, just somewhat higher. More importantly, for all four exceedances, the hazardous waste boiler was not operating under the conditions proposed for an ECF boiler. For all four exceedances, the hazardous waste fuel had a heating value below 2,000 Btu/lb compared to 8,000 Btu/lb that is proposed for ECF. And, for one of the exceedances, the hazardous waste fuel had a viscosity of 165 cSt, while the maximum viscosity for ECF would be 50 cSt. To reiterate, operating under conditions less stringent than proposed for ECF boilers could result in higher emissions of organic compounds.

Notwithstanding this analysis of available emissions data, we acknowledge that, when ECF with higher concentrations of certain hydrocarbons and oxygenates than fuel oil is burned even under good combustion conditions, emissions of hazardous organics may be somewhat higher than those from burning fossil fuel. This is because combustion is generally a percent-reduction process. Thus, even though good combustion conditions may ensure a very high destruction efficiency (e.g., 99.9999% reduction), emission concentrations may nonetheless increase as the feedrate of an organic compound increases. We believe, however, that these increases would be *de minimis* because operating under the good combustion conditions proposed for ECF boilers ensures that emissions of hazardous organic compounds would generally be at trace levels, and, as discussed below, protective of human health and the environment.[23]

b. Compounds for Which We Only Have Hazardous Waste Boiler Emissions Data. We have hazardous waste boiler emissions data for 33 hazardous organic compounds for which we do not have oil-fired boiler emissions data for comparison. Average hazardous waste boiler emissions for each of these compounds are at trace levels—below 11 µg/dscm[24]—except for bis(2-ethylhexyl)phthalate and chloroform.

We have bis(2-ethylhexyl)phthalate emissions data for 15 test conditions (generally comprised of three runs) representing 15 different boilers. Test condition average emissions ranged from 0.34 µg/dscm to 600 µg/dscm for the boilers, with an average of 69 µg/dscm. Although the highest test condition average—600 µg/dscm—appeared to be an outlier given that the second highest average was 130 µg/dscm and 12 test conditions were below 42 µg/dscm, we determined that it is not a statistical outlier.[25] Nonetheless, we note that: (1) The boiler with the highest emissions—600 µg/dscm—was not operating under the conditions that are proposed for an ECF boiler (which could result in higher emissions)—the primary fuel firing rate was approximately 30% rather than a minimum of 50%, and boiler load was approximately 30% rather than a minimum of 40%; and (2) bis(2-ethylhexyl)phthalate is known to be a common lab contaminant, and thus the reported emissions levels may be suspect.

For chloroform, we have emissions data for 9 test conditions (generally comprised of three runs) representing 9 different boilers. Test condition average emissions ranged from 0.28 µg/dscm to 270 µg/dscm for the boilers, with an average of 45 µg/dscm. Although the highest test condition average—270 µg/dscm—appeared to be an outlier given that the second highest average was 85 µg/dscm and the remaining test conditions did not exceed 16 µg/dscm, we determined that it is not a statistical outlier. We note, however, that the boiler with the highest emissions—270 µg/dscm—was not operating under the conditions that are proposed for an ECF boiler—it burned a waste fuel with a heating value below 8,000 Btu/lb and it is not clear whether the boiler burned process vent gas or natural gas as primary fuel.

2. Evaluation of RCRA Risk Assessments

In addition to the analysis of emission concentrations discussed above, we reviewed the RCRA risk assessments[26] that had been completed by June 2006 for hazardous waste watertube steam boilers other than stoker-fired boilers to determine if organic emissions under the good combustion conditions required by the standards under Part 266, Subpart H, may result in unacceptable risk to human health and the environment. We determined that such risk assessments had been conducted at 13 facilities and decisions on whether omnibus/additional permit conditions are needed to ensure emissions are protective have been made for nine of those facilities. A decision to include an omnibus permit condition to address organic emissions has been made for only two of the nine facilities, however.

The first facility operated several boilers equipped with a common electrostatic precipitator. Risk-based dioxin emission limitations and associated testing and temperature monitoring requirements were established in the permit based upon a finding that dioxin/furan emissions during an isolated test event exceeded risk levels of concern. During that test event, artificial chlorine spiking into the waste feed was conducted. During subsequent testing under the permit terms, chlorine spiking did not take place and compliance with the risk-based dioxin/furan emission limitations was demonstrated. Electrostatic precipitator operating temperatures during the subsequent tests ranged from 396 °F to 418 °F. We note, however, that the chlorine specification proposed for ECF would prohibit chlorine concentrations from approaching the levels present during the instances of chlorine spiking at this facility. In addition, we also note that today's proposal would require that ECF boilers (other than coal-fired boilers) equipped with an ESP or FF maintain a gas temperature below 400 °F as a condition of the exclusion. See discussion in Section II below.

For the second facility where omnibus permit conditions were imposed, there was no finding of excess risk associated with any organic constituents. Rather, the omnibus permit conditions serve as a trigger for a reassessment of risk if emissions levels higher than those considered in the initial risk assessment were measured.

This analysis confirms our view that organic emissions from hazardous waste

[23] Please note that a peer reviewer questioned whether ECF emissions could, in fact, be expected to be comparable to oil-fired boiler emissions given the unlimited concentrations of the listed hazardous compounds (i.e., benzene, toluene, and the oxygenates) that may be present in ECF. We respond to this comment in Part Two, Section VII of the preamble.

[24] As discussed in footnote 22, emissions at this low concentration are in the *de minimis* range.

[25] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Appendix C.

[26] See § 270.32(b)(2).

boilers operating under good combustion conditions required under §§ 266.104 and 63.1217 are generally protective. It also confirms our view that organic emissions from ECF boilers operating under the good combustion conditions discussed in Section II below should be protective.

3. Comparative Risk Assessment for Dioxin/Furan

Finally, we also conducted an abbreviated comparative risk assessment for dioxin/furan emissions from boilers burning hazardous waste and that meet the design conditions for an ECF boiler discussed below in Section II—a watertube steam boiler that is not stoker-fired. The abbreviated evaluation used one component of the comparative risk evaluation used to support the Phase II hazardous waste combustor MACT for boilers [27]—the Margin of Exposure (MOE) analysis.[28] The emission-adjusted MOE analysis uses the risk ''safety margins'' (i.e., modeled MOEs) determined from the MACT Phase I comprehensive risk assessment for hazardous waste incinerators [29] to determine whether, considering emissions alone, risks for a second universe, here, the ECF boilers, could rise to a level of concern.[30] Smaller MOEs correspond to a greater potential for risk beyond the level of concern (i.e., 1E–05 lifetime cancer risk). In this analysis, we: (1) Revised the dioxin/furan emissions data base for Phase II hazardous waste boilers to establish a data base of boilers that meet the ECF boiler design conditions (i.e., by eliminating boilers other than watertube steam boilers that are not stoker-fired) and by adding dioxin/furan emissions data obtained during the evaluation of risk burns for hazardous waste boilers, as discussed above; (2) calculated point estimates and confidence intervals for the revised emissions data base; (3) combined the Phase I incinerator data base with the revised (i.e., ECF) boiler data base and conducted tests for common generalized percentiles; and (4) adjusted the MOE, if appropriate.[31] The analysis indicates that the emissions-adjusted MOEs representing the ECF boilers are higher than the MOEs for the Phase I incinerators. This suggests a lower potential for risk for the ECF boilers compared to hazardous waste incinerators. This means that, within the limitations of the analyses, dioxin/furan emissions from ECF boilers pose no greater hazard than the emissions from hazardous waste incinerators, and therefore, should remain within levels that are protective.

Based on this information—comparison of emissions concentrations from hazardous waste boilers and oil-fired boilers; evaluation of omnibus risk assessments; and evaluation of dioxin/furan risk—we conclude that emissions from burning ECF in a boiler under the conditions proposed today would be comparable to fuel oil emissions and would be generally protective of human health and the environment. We specifically request additional data and comment on our analyses and conclusions.

II. What Conditions Would Apply to Burners of Emission-Comparable Fuel?

The ECF exclusion proposed today would be conditioned on burning ECF under conditions typical of a fuel oil-fired industrial boiler operating under good combustion conditions. The ECF conditions would ensure that the boiler maintains a hot, stable flame, and that ECF is properly atomized and fired into that flame. In addition, post-combustion conditions would minimize the potential for dioxin/furan formation by controlling the combustion gas temperature at the inlet to a dry particulate matter control device for boilers so-equipped. Accordingly, we propose the following conditions: (1) The burner must be a watertube steam boiler other than a stoker-fired boiler; (2) carbon monoxide (CO) must be monitored continuously, must be linked to an automatic ECF feed cutoff system, and must not exceed 100 ppmv on an hourly rolling average (corrected to 7% oxygen); (3) the boiler must fire at least 50% primary fuel on a heat input or volume basis, whichever results in a higher volume of primary fuel, and the primary fuel must be fossil fuel or tall oil with a heating value not less than 8,000 Btu/lb; (4) the boiler load must be 40% or greater; (5) the ECF must have an as-fired heating value of 8,000 Btu/lb or greater; (6) ECF must be fired into the primary fuel flame zone; (7) the ECF firing system must provide proper atomization; and (8) if the boiler is equipped with an electrostatic precipitator (ESP) or fabric filter (FF) and does not fire coal as the primary fuel, the combustion gas temperature at the inlet to the ESP or FF must be continuously monitored, must be linked to the automatic ECF feed cutoff system, and must not exceed 400 °F on an hourly rolling average. These conditions are consistent with oil-fired industrial boiler design and operating conditions that ensure good combustion (and post-combustion control of dioxin/furan) and ensure that emissions from burning ECF are comparable to fuel oil emissions.[32] In addition, as discussed in the previous section, such emissions would be at levels which are protective of human health and the environment.

The boiler design and operating conditions that ensure a hot, stable flame and good combustion of ECF (i.e., all of the conditions, except the condition to minimize post-combustion formation of dioxin/furan by limiting the gas temperature at the inlet to the ESP or FF) derive from extensive testing that EPA conducted in the mid-1980's to identify design and operating parameters that affect the combustion of hazardous organic compounds in waste fuels fired as supplementary fuel in boilers. See 52 FR at 16995–96 (May 6, 1987). EPA used the results of that testing to identify design and operating conditions that would ensure that waste fuel is properly atomized and fired into a hot, stable flame to ensure destruction of hazardous organics in the waste fuel to trace levels and to minimize formation of products of incomplete combustion (PICs) to levels that would not pose a hazard to human health or the environment.

Those operating conditions also reflect typical operations for an oil-fired industrial boiler operating under good combustion conditions: (1) As discussed below, CO levels below 100 ppmv are typically achieved by oil-fired industrial boilers; (2) the oil fuel provides a hot, stable flame; and (3) boilers generally operate at loads greater than 40% and can experience poor combustion conditions at lower loads. The design conditions—the boiler must be a watertube steam boiler that is not stoker-fired—also reflect industrial

[27] See 70 FR at 59536–37 (October 12, 2005).

[28] USEPA, ''Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards,'' September 2005, Chapter 6.

[29] RTI International, ''Inferential Risk Analysis in Support of Standards for Hazardous Air Pollutant Emissions from Hazardous Waste Combustion,'' June 2005, Section 1.

[30] It must be emphasized that emission-adjusted MOEs should not be construed as predictions of the level of risk. Instead, they are only intended to provide an indication of whether risks could exceed a level of concern based on simplifying assumptions and as such, are subject to some level of uncertainty.

[31] See USEPA, USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 5.3.4.

[32] Given that burning ECF under the proposed conditions will destroy toxic organic compounds in the ECF generally to trace levels, we are proposing that burning excluded fuel that was derived from a hazardous waste listed under §§ 261.31–261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous waste. See proposed § 261.38(b)(12).

boiler designs that help ensure optimum combustion efficiency. See discussion below in Section B.1.

A. Why Isn't a DRE Performance Test a Critical Requirement To Ensure Good Combustion Conditions?

EPA concluded from the boiler testing discussed above that: (1) Boilers cofiring hazardous waste fuels with fossil fuels where the hazardous waste provides less than 50 percent of the boiler's fuel requirements can achieve 99.99 percent destruction and removal efficiency (DRE) of POHCs (principal organic hazardous constituents) under a wide range of operating conditions (e.g., load changes, waste feed rate changes, excess air rate changes); (2) when boilers are operated at high combustion efficiency, as evidenced by flue gas carbon monoxide (CO) levels of less than 100 ppmv, DRE exceeds 99.99 percent; (3) boilers clearly operating under poor combustion conditions, as evidenced, for example, by smoke emissions, still achieved 99.99 percent DRE: (4) emissions of PICs appeared generally to increase as combustion efficiency decreased as evidenced by increased flue gas CO levels; and (5) emission of total unburned hydrocarbons (i.e., quantified Part 261, Appendix VIII pollutants, as well as unburned POHCs and other unburned organic compounds) may increase as combustion efficiency decreases as evidenced by an increase in flue gas CO levels. See 52 FR at 16995.

These results confirm that a 99.99% DRE regulatory requirement (coupled with compliance with limits on operating conditions established during the DRE performance test) has limited utility for ensuring that a combustor operates under the good combustion conditions necessary to destroy both hazardous organics in the fuel feed and PICs to levels that are protective of human health.[33] EPA has explained, however, why a limit on carbon monoxide emissions (i.e., 100 ppmv, hourly rolling average) is a conservative indicator of good combustion conditions for boilers (and other combustors) that will result in destruction of both POHCs and PICs. See 52 FR at 16998; 70 FR at 59461–463. Of the four combustion failure modes that EPA has identified—total ignition failure, partial ignition failure, combustion air failure, and rapid quench failure—only a total ignition failure could result in low CO and poor combustion of POHCs and PICs.[34] Total ignition failure could potentially occur in a boiler if the fuel firing gun inadvertently directed the fuel to a location in the combustion chamber away from the flame zone—i.e., if the fuel were not fired into the flame zone. The other combustion failure modes result in high CO and potentially high unburned organics:[35] partial ignition failure; combustion air failure; and rapid quench failure. Thus, it is important to ensure that waste fuels are fired into the flame zone of a boiler when relying on CO emission levels to ensure good combustion conditions (and that 99.99% DRE is achieved), as proposed for ECF boilers.

B. What Is the Rationale for the Proposed Burner Conditions?

From the discussion above, it could be argued that the only controls needed to ensure good combustion conditions and destruction of hazardous organics in ECF would be continuous monitoring of carbon monoxide and a requirement to fire ECF into the flame zone to avoid total ignition failure. Notwithstanding this view, we believe it is appropriate to apply additional controls to help ensure that an ECF boiler operates under the good combustion conditions typical of an oil-fired industrial boiler given that ECF would be burned under a conditional exclusion absent a RCRA permit and the regulatory oversight typical for a RCRA hazardous waste combustor. The proposed conditions would help ensure good combustion conditions by requiring that ECF has substantial heating value and that it is fired into a hot, stable flame. There are many industrial boilers that meet the design criteria (i.e., watertube steam boiler that is not stoker-fired) and the operating conditions generally reflect standard operating practice. The proposed conditions consequently are analogous to conditions under which fuel oil, the commercial product for which ECF substitutes, are burned. Furthermore, more than 90% of the candidate waste fuel streams identified by generators had heating values greater than 8,000 Btu/lb.[36]

The rationale for each of the proposed burner conditions is discussed below. We specifically request comment on each of these proposed conditions.

1. ECF Must Be Burned in a Watertube Steam Industrial or Utility Boiler That Is Not Stoker-Fired

A condition of the proposed exclusion would require the ECF burner to be a watertube steam boiler that does not fire fuels using a stoker or spreader-stoker feed system.[37] ECF also must be burned in a boiler rather than in an industrial furnace, such as a cement kiln, because the Agency conducted nonsteady-state emissions tests (as part of the boiler testing program discussed above) to identify the parameters that affect combustion efficiency only for boilers. Industrial furnaces have a primary purpose other than burning fuels most efficiently and we have not determined the operating conditions that would ensure good combustion conditions absent the regulatory oversight provided by the RCRA hazardous waste permit program.

The boiler must be a watertube, nonstoker boiler because there is a greater potential for poor distribution of combustion gases and localized cold spots in firetube and stoker boilers that can result in poor combustion conditions. In particular, stoker and spreader-stoker boilers generally burn solid fuels with a relatively large particle size on a bed, thus making even distribution of combustion air difficult. See 56 FR at 7148.

The boiler must be a steam boiler rather than a process heater because process heaters can have a primary purpose other than to burn fuels under optimum combustion conditions. An example is a process heater that quenches combustion gases to reduce gas temperatures to avoid overheating a process fluid. Such operating conditions could adversely affect combustion efficiency by interrupting the complete combustion of organic compounds.

Finally, the boiler must be an industrial or utility boiler as currently

[33] We note that, for this reason, hazardous waste boilers are currently exempt from the requirement to demonstrate 99.99% DRE if the boiler complies with specific design and operating conditions, including the principal organic emission control requirement of continuously monitoring CO and compliance with a limit of 100 ppmv. See § 266.110. We note further that the ECF boiler conditions proposed today are at least as stringent as the conditions provided by § 266.110.

[34] See USEPA, USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Appendix A.

[35] Because CO is more thermally stable than other intermediate combustion products, high CO emissions may or may not be indicative of high PIC emissions. If CO is low, however, combustion has progressed to the point that PIC emissions will be low (assuming total ignition failure is avoided). Thus, CO is considered a conservative indicator of good combustion. See 52 FR at 16998.

[36] Letter from American Chemistry Council (Carter Lee Kelly, Leader, Waste Issues Team, and Robert A. Elam, Director, Regulatory Affairs, Waste Issues Team) to Robert Springer and Matt Hale, USEPA, dated November 24, 2003.

[37] Stoker-fired boilers are designed to burn solid fuels (including coal, wood, municipal wastes, etc.) on a bed. Stokers are mechanical or pneumatic devices that feed solid fuels onto a grate at the bottom of the furnace and remove the ash residue after combustion. See USEPA, USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 3.3.2.

required under the comparable fuel exclusion. See proposed § 261.38(c)(2)(i). This would ensure that ECF is burned in boilers that are capable of handling this type of fuel (e.g., rather than boilers at schools, apartments, or hospitals) and that would be subject to Federal, state, or local air emission requirements.

We request comment on whether there are other types of combustors (e.g., thermal oxidizer) that may be able to burn ECF under the good combustion conditions comparable to an industrial watertube steam boiler (that is not of stoker design). Any suggestions for other types of combustors must include supporting information in order for the Agency to be able to consider it for final action.

2. CO Monitoring

A condition of the proposed exclusion would require that combustion gas CO be monitored continuously, that the CO recordings be linked to an automatic ECF feed cutoff system, and that CO emissions not exceed 100 ppmv on an hourly rolling average (corrected to 7% oxygen). As discussed above, low CO emissions, coupled with firing ECF in the primary fuel flame zone, are the primary controls for ensuring that the boiler is operating under good combustion conditions.

EPA has used continuous CO monitoring as an indicator of good combustion for various types of combustors, including boilers that burn hazardous waste and boilers that do not burn hazardous waste. See 70 FR at 59463–64 for a discussion of using CO to control organic HAP under the NESHAP for hazardous waste boilers,[38] and 68 FR at 1671 for a similar discussion in the context of the NESHAP for boilers that do not burn hazardous waste. We note that the NESHAP for boilers that do not burn hazardous waste (i.e., Industrial Boiler NESHAP) requires continuous CO monitoring only for new solid, liquid, or gas boilers with a capacity greater than 100 MM Btu/hr. The CO limit is 400 ppmv corrected to 3% oxygen for oil and gas boilers and 400 ppmv corrected to 7% oxygen for solid fuel boilers, and is based on a 30-day average. Boilers with a capacity in the range of 10 MM Btu/hr to 100 MM Btu/hr comply with the CO limit based on a 3-run average during periodic performance testing. See Table 1 to Subpart DDDDD, Part 63. EPA did not establish a CO limit for existing boilers that do not burn hazardous waste because: (1) CO monitoring was not floor control given that inadequate information was available to conclude that 6% of the sources were equipped with CO monitors or that 6% of the sources were subject to state standards for CO monitoring; and (2) CO monitoring did not appear to be cost-effective as a beyond-the-floor control technique. For new sources where MACT floor is based on the performance of the single best performing source within a category or subcategory, EPA established CO monitoring requirements based on the most stringent state standards for CO monitoring that applied to all large boilers (i.e., greater than 10 MM Btu/hr) in a subcategory (i.e., solid fuel, liquid, and gas boilers) and to all fuel types burned by boilers within the subcategory (e.g., for solid fuel boilers, coal, wood, and other biomass).[39]

Notwithstanding the 400 ppmv CO limit (based on a 30-day average or periodic performance testing[40]) applicable to new industrial boilers that do not burn hazardous waste, a 100 ppmv limit (based on an hourly rolling average) is appropriate for ECF burners because: (1) The limited CO data in the Industrial Boiler NESHAP data base indicate that oil-fired boilers, the boiler subcategory most analogous to a boiler burning ECF, are achieving CO levels below 100 ppmv;[41] (2) hazardous waste fuels that are proposed to be excluded as ECF are currently burned in boilers subject to a 100 ppmv (hourly rolling average) CO standard under RCRA § 266.104, also indicating that a CO limit of 100 ppmv is readily achievable; and (3) a tighter CO limit for ECF than the CO limit that applies to industrial boilers burning fossil fuels and nonhazardous waste fuels is appropriate given the greater potential for ECF emissions to pose a hazard to human health and the environment (i.e., it is reasonable and appropriate to tailor the management controls that apply to the most analogous product, fuel oil, to address the greater hazards posed by potentially high concentrations of hazardous organic compounds in ECF).[42]

We similarly do not believe that periodic rather than continuous CO monitoring would be appropriate for ECF boilers, even though periodic CO monitoring is allowed under the Industrial Boiler NESHAP to boilers in the size range of 10 MM Btu/hr to 100 MM Btu/hr. As discussed above, low CO emissions, combined with the requirement to fire ECF into the primary fuel flame zone, is the principal indicator of good combustion conditions. Periodic CO monitoring would ensure good combustion conditions only periodically—combustion conditions could deteriorate an hour, day, or week after the periodic performance test. Given the potential hazards that burning ECF under poor combustion conditions can pose compared to fossil fuels and nonhazardous waste fuels, and given the variability in combustion characteristics that ECF may have over time relative to the primary fuel, it is reasonable to condition the exclusion on continuous CO monitoring.[43] Nonetheless, we specifically request comment on whether periodic rather than continuous

[38] The NESHAP for hazardous waste boilers allow sources to continuously monitor total hydrocarbons and comply with a limit of 10 ppmv in lieu of continuously monitoring CO and complying with a limit of 100 ppmv. See §§ 63.1216(a)(5) and 63.1217(a)(5). We are not proposing a total hydrocarbon alternative for ECF boilers, however, because very few, if any, hazardous waste boilers elect that alternative given the complexity of maintaining a continuous hydrocarbon monitor. In addition, boilers that are designed to rapidly quench the combustion gas temperature and thus cannot achieve CO levels below 100 ppmv have no choice other than to monitor hydrocarbons if they burn hazardous waste fuels. But, these boilers may not be appropriate candidates for burning ECF even if they achieve hydrocarbon levels below 10 ppmv absent the regulatory oversight of a RCRA or Title V permit given that they are not designed to achieve optimum combustion efficiency. Nonetheless, we request comment on whether the rule, if finalized, should allow ECF boilers the option of continuously monitoring hydrocarbons and complying with a limit of 10 ppmv as an alternative to CO monitoring.

[39] See 68 FR at 1673 and the memorandum from Jim Eddinger, EPA, to Docket No. OAR–2002–0058 entitled, ''Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Based on Public Comments,'' dated February 2004, pp. 18–19.

[40] The 30-day averaging period for the Industrial Boiler NESHAP was adopted because boilers burning biomass under certain conditions (e.g., wet wood after a rain event) could not achieve the CO limit over a shorter averaging period. This situation is not relevant here. ECF boilers that burn fuel oil or natural gas as primary fuel can readily achieve a 100 ppmv CO limit over an hourly rolling average.

[41] See USEPA, USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 3.4. Also, we note that EPA adopted the 400 ppmv CO limit for boilers that do not burn hazardous waste to accommodate the higher CO levels that can result from burning solids, particularly wet biomass after rain events. That scenario would not be applicable to a boiler burning ECF. ECF boilers can readily achieve CO levels below 100 ppmv.

[42] The hazardous waste boiler emissions data we analyzed as a surrogate for ECF emissions data to determine if emission concentrations were comparable to fuel oil emissions were derived from hazardous waste boilers operating under a CO limit of 100 ppmv. If those boilers operated at higher CO levels and thus at lower combustion efficiency, emissions of toxic organic compounds may have been higher.

[43] The Industrial Boiler NESHAP requires CO monitoring, albeit periodic monitoring, for all new boilers in the size range of 10 MM Btu/hr to 100 MM Btu/hr. The proposed continuous CO monitoring conditions for ECF boilers, irrespective of size, would apply only to those boilers that elect to burn ECF.

CO monitoring should be allowed for ECF boilers in the size range of 10 MM Btu/hr to 100 MM Btu/hr, consistent with the Industrial Boiler NESHAP CO monitoring provisions for new boilers. Commenters must explain and provide supporting information why periodic monitoring is sufficient, including how the owner or operator would ensure that the boiler is operating under ''good combustion conditions'' during those times that the boiler is not being monitored for CO in order for the Agency to be able to consider it for final action.

Finally, we propose to specify that the CO monitor must be linked to an automatic ECF feed cutoff system to ensure that ECF is fired only when the boiler is operating under good combustion conditions—when CO levels are below 100 ppmv on an hourly rolling average. Linking the CO monitor to an automatic ECF feed cutoff system is appropriate given that emissions may be neither comparable to fuel oil nor protective if the boiler is not operating under good combustion conditions. An automatic feed cutoff system does not appear to be cost-prohibitive and would help assure effective combustion. We propose to adopt the provisions for automatic feed cutoff systems that apply to boilers that burn hazardous waste—§ 63.1206(c)(3)—and for the same reasons. See USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' July 1999, Chapter 11.

3. The Boiler Must Fire at Least 50% Primary Fuel

A condition of the proposed exclusion would require an ECF boiler to fire at least 50% primary fuel on a heat input or volume basis, whichever results in a higher volume of primary fuel, and the primary fuel must be fossil fuel or tall oil with a heating value not less than 8,000 Btu/lb. These conditions would ensure that a hot, stable flame is provided to help ensure optimum combustion conditions. Although a primary fuel firing rate of 50% is at the lower end of the range of reasonable values—50% to 75% primary fuel—that could have been selected, we believe it is a reasonable condition because it would ensure that the boiler is burning primarily fossil fuel (or equivalent) and so ensures a hot, stable flame.[44] We also note that this condition would be consistent with the primary fuel requirement for hazardous waste boilers under § 266.110 that elect to waive the DRE performance standard under operating conditions that ensure optimum combustion efficiency.

The primary fuel would be required to have a minimum heating value of 8,000 Btu/lb to reflect the low end of the range of heating values for fossil fuels normally fired in industrial boilers. Most coal-fired industrial boilers burn either subbituminous coal (with heating values ranging from 8,300–11,500 Btu/lb) or bituminous coal (with heating values ranging from 10,500 to 14,000 Btu/lb). Lignite, a low-rank coal that typically has a heating value below 8,000 Btu/lb, is not commonly burned in industrial boilers.

Although we believe that the primary fuel would generally be fossil fuel—oil, natural gas, or coal (i.e., pulverized coal burned in suspension)—it is reasonable to allow other high-quality fuels as the primary fuel. Consequently, tall oil would also be allowed as a primary fuel. Tall oil is fuel derived from vegetable and rosin fatty acids and has a heating value comparable to fuel oil.

We specifically request comment on whether a condition to require a minimum of 50% primary (generally fossil) fuel is appropriate to maintain a hot, stable flame to ensure good combustion of ECF. Any comments recommending an alternative minimum limit for the primary fuel firing rate must include supporting information in order for the Agency to be able to consider it for final action.

4. The Boiler Load Must Be 40% or Greater

A condition of the proposed exclusion would require the ECF boiler to operate at 40% load (i.e., the heat input at any time when ECF is fired must be at least 40% of the maximum rated boiler heat input) or greater to ensure a hot, stable flame. At low loads, higher excess air rates are used to improve fuel/air mixing. The increased excess air rates, however, can also cool the flame zone and even make the flame unstable (e.g., as a candle flame flickers in a breeze), thereby increasing the likelihood of flameout. These conditions can result in reduced combustion efficiency. Although a lower boiler load could have been selected within the reasonable range of 25% to 40% of maximum load, we believe it is appropriate to adopt a value at the high end of the range to be conservative given that ECF can contain concentrations of certain hydrocarbons and oxygenates higher than the specifications listed in Table 1 to § 261.38. We also note that a minimum load requirement of 40% would be consistent with the requirement for hazardous waste boilers under § 266.110 that elect to waive the DRE performance standard under operating conditions that ensure optimum combustion efficiency.

We specifically request comment on whether a condition on minimum boiler load of 40 percent is appropriate to maintain a hot, stable flame and thus ensure good combustion conditions. Any comments recommending an alternative minimum boiler load must include supporting information in order for the Agency to be able to consider it for final action.

5. The ECF Must Have an As-Fired Heating Value of 8,000 Btu/lb or Greater

A condition of the proposed exclusion would require the ECF to have an as-fired heating value of 8,000 Btu/lb or greater. This is a reasonable minimum heating value that could have been selected within the range of 5,000 Btu/lb to 10,000 Btu/lb because: (1) It is the minimum heating value of fossil fuels normally fired in industrial boilers (i.e., subbituminous coal); and (2) it would help ensure that a hot, stable primary fuel flame is maintained. We also note that more than 90% of the candidate waste fuel streams identified by generators had heating values greater than 8,000 Btu/lb.[45]

Although ECF, like comparable fuel, would need to have a heating value of 5,000 Btu/lb as-generated (or after bona fide treatment as a hazardous waste), it must have a minimum heating value of 8,000 Btu/lb as-fired. Accordingly, ECF may be blended with fuels (including comparable fuel) other than hazardous waste to achieve an as-fired heating value of at least 8,000 Btu/lb. However, any fossil fuel used to blend ECF to achieve the minimum 8,000 Btu/lb heating value requirement could not be counted to achieve the proposed condition that the boiler must have a minimum firing rate of 50% primary fuel.

We specifically request comment on whether a condition to require that ECF have an as-fired heating value of 8,000 Btu/lb or greater is appropriate to help ensure that the hazardous compounds that may be present in the ECF at high concentrations are destroyed to levels comparable to oil-fired boiler emissions. Any such comments on alternative ECF heating values must include supporting

[44] ECF could be cofired with other fuels, including waste fuels, that may not have combustion characteristics comparable to fuel oil, natural gas, or ECF. Thus, absent a condition that at least 50% of the fuel must have a heating value of 8,000 Btu/lb or greater, a hot, stable flame into which ECF would be fired could not be assured.

[45] Letter from American Chemistry Council (Carter Lee Kelly, Leader, Waste Issues Team, and Robert A. Elam, Director, Regulatory Affairs, Waste Issues Team) to Robert Springer and Matt Hale, USEPA, dated November 24, 2003.

information in order for the Agency to be able to consider it for final action.

6. ECF Must Be Fired Into the Primary Fuel Flame Zone

As a condition of the proposed exclusion, ECF must be fired into the primary fuel flame zone to avoid, potentially, total ignition failure—a combustion failure mode characterized by poor combustion, high emissions of unburned organic compounds, but potentially low CO emissions. Under this combustion failure mode, organic compounds in ECF would not be exposed to the hot flame zone and may be simply volatilized absent combustion. Thus, under this failure mode, low CO emissions may not be indicative of good combustion conditions.

As a practical matter, firing waste fuels (or any fuels) directly into the flame zone of the boiler is standard operating practice. Directing the fuel burner in a direction that avoided the flame zone would normally occur only inadvertently. Nonetheless, we believe it is prudent to propose this condition to highlight its importance in achieving good combustion conditions.

We specifically request comment on whether a condition to require that ECF be fired into the primary fuel flame zone is appropriate to help ensure that the hazardous compounds that may be present in the ECF at high concentrations are destroyed to levels comparable to oil-fired boiler emissions. Any such comments must include supporting information in order for the Agency to be able to consider it for final action.[46]

7. The ECF Firing System Must Provide Proper Atomization

As a condition of the proposed exclusion, the ECF firing system must provide proper atomization to ensure that the ECF droplets are not too large for optimum volatilization. An organic compound must be vaporized and mixed with air before combustion can occur. The quicker ECF and its constituents are vaporized and the more completely the volatilized compounds are mixed with air, the more rapid and efficient the combustion and destruction of organic constituents. Firing systems that atomize liquid fuels to form small droplets increase the rate of vaporization by providing a larger surface area per volume of fuel to absorb heat from the flame.

We are proposing to allow the use of virtually all atomization systems commonly used to fire liquid fuels.[47] We are, however, proposing to restrict the maximum size of solids that may be present in liquid fuels that meet the viscosity specification of 50 cSt—the as-fired ECF must pass through a 200 mesh screen. This would ensure that the appropriate droplet size is achieved (to ensure volatilization and destruction of organic compounds) and minimize plugging of the firing nozzle. The acceptable atomization systems are air, steam, mechanical, or rotary cup atomization systems.[48]

a. Air or steam atomization. Air or steam atomization systems use air or steam to break up the fuel into small droplets. Under ordinary operations, high pressure steam or air provided at 30 to 150 psig produces much smaller droplets than other atomization systems. Because of the cost of providing high pressure air and where steam is not readily available, low pressure (1–5 psig) burners are sometimes used.

b. Mechanical atomization. Mechanical atomizers break up the fuel into small droplets by forcing it through a small, fixed orifice. A strong cyclonic or whirling velocity is imparted to the fuel before it is released through the orifice. Combustion air is provided around the periphery of the conical spray of fuel. The combination of combustion air introduced tangentially into the burner and the action of the swirling fuel produces effective atomization.

The size of the droplets produced by mechanical atomization is a function principally of the fuel viscosity and the fuel pressure at the atomizing nozzle. The pressure required to produce a droplet size conducive to optimum combustion efficiency depends on the volatility of the fuel. Highly volatile materials can volatilize rapidly, even from larger droplets, and, thus, can be fired at pressures of 75 to 150 psig. Less volatile fuels may require an atomization pressure as high as 1,000 psig to form droplets small enough to rapidly volatilize.

Given that fuel pressure is an important factor in determining droplet size, we considered whether it would be appropriate to propose to limit the minimum fuel pressure as a condition of the exclusion.[49] Optimum fuel pressure to produce an optimum droplet size, however, is a function of fuel volatility and fuel/air mixing. Thus, it is not practicable to propose specific limits on minimum fuel pressure. Rather, we are proposing that the boiler owner or operator be required to maintain fuel pressure within the atomization system design range considering the viscosity and volatility of the waste fuel, the fuel/air mixing system, and other appropriate parameters. This approach would allow the atomization system manufacturer or designer (e.g., if designed and fabricated on-site) the necessary flexibility to determine an acceptable fuel pressure considering the specifics of the situation. If fuel pressure is not maintained at appropriate levels to ensure small droplet size and optimum combustion efficiency or, if for any other reason the boiler does not achieve maximum combustion efficiency, the boiler may not be able to achieve CO levels below 100 ppmv.

c. Rotary cup atomization. The rotary cup atomizer uses centrifugal force to break up the fuel into droplets. It consists of an open cup mounted on a hollow shaft. The fuel is pumped at low pressure through the hollow shaft to the cup which is rotating at several thousand revolutions per minute. A thin film of the fuel is centrifugally torn from the tip of the cup. As centrifugal force drives the fuel off the cup, combustion air is admitted in a rotation counter to the direction of the cup. This counter motion of the air breaks up the conical sheets of fuel into droplets and provides turbulence for mixing the droplets with air.

Rotary cup atomizers are typically used on smaller boilers (e.g., less than 30 MM Btu/hr heat input) because the maximum capacity of the largest unit is about 1,400 pounds of fuel per hour. In addition, rotary cup atomizers are not often installed on new boilers because it is difficult to achieve optimum fuel/air mixing over a wide range of fuel flow rates. Rotary cup atomizers are used because they are relatively inexpensive, they can handle fuels with relative high viscosities ranging up to 40 to 72 cSt,[50]

[46] Please note that we also request comment on conditions (other than proper atomization) that may be appropriate for the ECF firing system in Part Two, Section VII, in response to comments from a peer reviewer.

[47] A simple lance (essentially an open pipe without any means of atomization), however, could not be used to fire ECF.

[48] Engineering Science, ''Background Information Document for the Development of Regulations to Control the Burning of Hazardous Waste in Boilers and Industrial Furnaces, Volume I: Industrial Boilers,'' January 1987, pp. 4–89 to 4–96.

[49] Mechanical atomizers are susceptible to erosion of the orifices in the firing nozzle. Erosion can increase the size of the orifice resulting in decreased fuel pressure and increased droplet size. Limits on minimum fuel pressure, thus, would ensure that droplet size remains optimized during the course of operations by either increasing fuel pressure as the nozzle erodes and, more likely, replacing an eroded firing nozzle.

[50] ECF could not have a viscosity exceeding 50 cSt given that it would be subject to the same specifications that apply to existing comparable fuel, except that the specifications for certain hydrocarbons and oxygenates would not apply.

and they are relatively insensitive to solid impurities in the fuel and can handle waste fuels with solids that can pass through a 34 to 100 mesh screen.[51]

Droplet size is related primarily to the viscosity and flow rate of the fuel and rotational speed of the cup. Resulting combustion efficiency is related to volatility of the fuel and fuel/air mixing. Although it is impracticable to control these variables in a regulatory context, manufacturers and boiler owners and operators have ample experience with rotary cup atomizers to design units that achieve efficient combustion. Thus, we are proposing that owners and operators demonstrate that the as-fired fuel has a volatility within the design parameters of the firing system and limit fuel flow rates consistent with the design parameters of the firing system. As discussed above, relative to mechanical atomization systems, if, in fact, the device does not produce droplet sizes and fuel/air ratios conducive to maintaining high combustion efficiency, the boiler may not be able to achieve CO levels below 100 ppmv.

We specifically request comment on whether these conditions for atomization of ECF are appropriate to help ensure that the hazardous compounds that may be present in the ECF at high concentrations are destroyed to levels comparable to oil-fired boiler emissions. Any such comments must include supporting information in order for the Agency to be able to consider it for final action.[52]

8. Dioxin/Furan Controls for Boilers Equipped With an ESP or FF

If a boiler is equipped with an electrostatic precipitator (ESP) or fabric filter (FF) and does not fire coal as the primary fuel,[53] we are proposing that the combustion gas temperature at the inlet to the ESP or FF be continuously monitored, be linked to the automatic ECF feed cutoff system, and not exceed 400 °F on an hourly rolling average. These proposed conditions would ensure that the post-combustion, heterogeneous surface-catalyzed formation of dioxin/furan in an ESP or FF is minimized so that emissions from burning ECF remain at least comparable to those from burning fossil fuels and remain at levels that are protective of human health and the environment.

We are basing these proposed conditions on information and data gathered from the recently promulgated NESHAP standards for hazardous waste combustors. See 70 FR 59402. Specifically, we have determined that the surface-catalyzed formation of dioxins/furans across an ESP or FF can be significant when gas temperatures exceed 400 °F.[54] When gas temperatures are below 400 °F (and the combustor is operating under good combustion conditions as evidenced by CO below 100 ppmv), however, dioxin/furan emissions are generally below 0.40 ng TEQ/dscm, the emission standard for most hazardous waste combustors.[55]

Boilers burning coal as the primary fuel would not be required to monitor combustion gas temperature at the inlet to an ESP or FF as a condition of the exclusion, however. We determined during development of the NESHAP for coal-fired boilers that burn hazardous waste that sulfur contributed by the coal is a dominant control mechanism because the sulfur inhibits formation of dioxins/furans.[56] Please note, however, that a peer reviewer questioned whether the low sulfur coal that some ECF boilers may burn would also inhibit formation of dioxins/furans. We believe that low sulfur coals would also inhibit formation of dioxins/furans (and, thus, a condition to limit the gas temperature at the inlet to the ESP or FF would not be needed), but request comment and supporting information on opposing views. See discussion in Section VII below.

We are further proposing an hourly averaging period for the temperature limit, rather than a longer averaging period, because there is a nonlinear relationship between gas temperature at the ESP or FF and dioxin/furan emissions. Consequently, a longer averaging period would allow higher temperatures to be offset by lower temperatures, even though dioxin/furan emissions at the higher temperatures could be exponentially higher than emissions at the lower temperatures, and, thus, average dioxin/furan emissions would be substantially higher than if temperatures had been maintained at the average temperature.[57]

We also believe that there are factors other than high gas temperature at the inlet to an ESP or FF that may contribute to the post-combustion formation of dioxin/furan in boilers, but these situations would not occur for boilers burning ECF under the proposed conditions. For example, we have dioxin/furan emissions data for nine three-run test conditions for eight boilers burning liquid hazardous waste fuel and equipped with wet scrubbers, and two of the boilers have emissions exceeding 0.40 ng TEQ/dscm.[58] Although the wet scrubbers on these boilers preclude surface-catalyzed dioxin/furan formation across the emission control device, the boilers nonetheless have high dioxin/furan emissions—1.4 ng TEQ/dscm and 0.44 ng TEQ/dscm. We note, however, that both of these boilers are firetube boilers and one burns waste fuel containing 60% by weight chlorine. Firetube boilers would not be allowed to burn ECF under the conditions proposed today for reasons discussed above and, in addition, the chlorine level in the waste fuel for one of the boilers is orders of magnitude higher than the specification for chlorine in Table 1 to § 261.38.[59] It is speculated that the higher tube surface to combustion gas

[51] We propose that ECF must be able to pass through a 200 mesh (74 micron) sieve to ensure that particles are small enough to ensure volatilization and destruction of organic compounds.

[52] Please note that we also request comment on conditions that may be appropriate for the ECF firing system in Part Two, Section VII, in response to comments from a peer reviewer.

[53] Note that oil-fired boilers are generally not equipped with a particulate matter control device and that the fraction that are so-equipped are typically equipped with wet scrubbers rather than an ESP or FF. Thus, we would expect that this condition would only apply to a small percentage of boilers that choose to burn ECF. See the memorandum from Jim Eddinger, EPA, to EPA Docket No. OAR–2002–0058, entitled, ''Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Based on Public Comments,'' dated February 2004, Section 6.4.2.

[54] USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies,'' July 1999, Section 3.0; USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' September 2005, Section 3.2, and USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Section 13.3.1.1.

[55] See §§ 63.1217, 63.1219, and 63.1220. See also USEPA, USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 5.

[56] USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Section 14.1.1.

[57] USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' September 2005, Section 2.2.3.

[58] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion, May 2007, Section 5.

[59] Although chlorine content of the feed is generally not considered a primary factor in formation of dioxin/furan (especially when other factors may predominate, such as high gas temperature at the inlet to the ESP or FF) because extremely small amounts of chlorine are sufficient to provide the chlorine for dioxin/furan formation, we are nonetheless concerned enough about chlorine content in the feed to require that hazardous waste combustors operate within the range of normal chlorine federate levels during performance testing to document compliance with the dioxin/furan emission standard. Thus, chlorine content of the feed may be a significant factor that could affect dioxin/furan formation. See USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' September 2005, Section 3.3.

volume ratio for a firetube boiler compared to a watertube boiler may increase the possibility of combustion gas flow over particulate matter that has adhered to the tubes within the 400–750 °F temperature window, which is conducive to surface-catalyzed formation of dioxins/furans.

We also have dioxin/furan emissions data for 11 three-run test conditions for six different boilers that burn hazardous waste and that are equipped with an ESP or FF. Gas temperatures at the ESP or FF were generally below 400 °F.[60] Only two test conditions (from two boilers) were above 0.4 ng TEQ/dscm. One boiler (which would be ineligible to burn ECF because it is a firetube boiler) had emissions of 0.66 ngTEQ/dscm during one test condition. This unit burns mixed waste with levels of chlorine and metals above the specifications in Table 1 to § 261.38. The second boiler (a watertube boiler), however, had average emissions of 2.4 ng TEQ/dscm. Although the FF for this boiler was operated slightly above 400 °F, we note that this boiler burned waste fuel containing nickel at levels orders of magnitude higher than the specification identified in Table 1 to § 261.38. Nickel, as well as copper and iron, have been suggested to be responsible for the catalytic reactions that lead to post-combustion formation of dioxins/furans.[61]

Therefore, based on the data described above, we believe that the scenarios that resulted in high dioxin/furan emissions when burning hazardous waste fuels would not occur for ECF boilers and that a proposed condition that would limit the gas temperatures at the inlet to a dry particulate matter control device to 400 °F should control dioxin/furan emissions generally to below 0.40 ng TEQ/dscm.[62] Moreover, we note that we have dioxin/furan emissions data for 38 three-run test conditions representing 32 different boilers burning hazardous waste fuel and not equipped with an emissions control device where the test condition average emissions were quite low—below 0.10 ng TEQ/dscm. In addition, we have dioxin/furan emissions data for 15 runs for oil-fired industrial boilers (i.e., not burning hazardous waste), and the average emissions were 0.013 ng TEQ/dscm and the maximum emissions were 0.042 ng TEQ/dscm.[63] This is further confirmation indicating that dioxin/furan emissions from boilers burning ECF under the proposed conditions should be quite low.

III. What Restrictions Would Apply to Particular Hydrocarbons and Oxygenates?

The toxicity, persistence and bioaccumulation potential for the 37 hydrocarbons and oxygenates for which specifications have been established in Table 1 to § 261.38 varies over a wide range. In addition, we acknowledge that when ECF with potentially higher concentrations of certain hydrocarbons and oxygenates than fuel oil is burned, even under good combustion conditions, emissions of hazardous organics maybe somewhat higher than those from burning fossil fuel because combustion is generally a percent-reduction process. Therefore, to ensure that the emissions from burning ECF as a fuel under the conditions proposed today remain protective, we propose to retain the specifications for compounds that can pose a high hazard—naphthalene and PAHs—and to restrict the firing rate of ECF containing concentrations of compounds that can pose a lower, but substantial hazard—benzene and acrolein. See *Safe Food and Fertilizers*, 353 F. 3d at 1271 (exclusion from the definition of solid waste can be justified by low risk posed by the recycling practice).

We explain below the rationale for the approach we use to categorize the 37 hydrocarbons and oxygenates for which specifications are established in Table 1 to § 261.38, according to their relative hazard to human health and the environment.

A. What Is the Rationale for the Relative Hazard Characterization Scheme?

We categorized the 37 hydrocarbons and oxygenates for which specifications have been established in Table 1 to § 261.38 as to their relative hazard.[64] We assigned the highest hazard constituents to Category A, the constituents that pose intermediate hazard to Category B, and the other constituents to Category C. As mentioned above, we are proposing to retain the specifications for the Category A constituents, restrict the feedrate of the Category B constituents, and not apply the specifications in Table 1 to the Category C constituents. We discuss below the procedure for categorizing the constituents.

First, we used the Waste Minimization Prioritization Tool (WMPT)[65] to rank the 37 hydrocarbons and oxygenates. The WMPT is a peer-reviewed methodology which provides a screening-level assessment of potential chronic (i.e., long-term) risks to human health and the environment, considering the chemicals' toxicity, persistence and bioaccumulation potential.[66]

The WMPT scoring method produces chemical-specific scores for a screening-level risk-based ranking of chemicals.[67] The scoring method was designed to generate an overall chemical score that reflects the potential of a chemical to pose risk to either human health or ecological systems. A measure of human health concern is derived, consistent with the risk assessment paradigm, by jointly assessing the chemical's human toxicity and potential for exposure. Similarly, a measure of the ecological concern is derived by jointly assessing the chemical's ecological toxicity and potential for exposure. The WMPT uses a small number of relatively simple measures to represent the toxicity (e.g., oral Cancer Slope Factor) and exposure potential (e.g., Bioaccumulation Factor) of each chemical, consistent with a screening-level approach and with other systems of this type.

We then applied the procedures the Agency used to develop the Priority

[60] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion, May 2007, Section 5.3.3.

[61] USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' September 2005, p. 3–17.

[62] We discussed previously in the text in Part Two, Section I.B, that an abbreviated comparative risk assessment for dioxin/furan emissions from hazardous waste boilers that meet the design conditions (i.e., watertube steam boiler that is not stoker-fired) for an ECF boiler indicates that dioxin/furan emissions from such a boiler are not likely to pose a hazard to human health or the environment.

[63] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion, May 2007, Section 3.4.

[64] Please note that we have conducted an independent peer review of our ranking procedures. See discussion in Part Two, Section VII, of the preamble.

[65] USEPA, ''Waste Minimization Prioritization Tool Background Document for the Tier III PBT Chemical List,'' 2000.

[66] After several rounds of internal expert and public comments, EPA used the current version of the WMPT as the initial step in the process of identifying the initial pool of priority chemicals that are national priorities for voluntary pollution prevention activities across the agency. EPA determined the initial pool of priority chemical candidates based on their rank. The rankings are based on the higher of available scores for human health concern (i.e., the sum of the scores for persistence, bioaccumulation, and human toxicity) and ecological concern (i.e., the sum of the scores for persistence, bioaccumulation, and ecological toxicity). The priority chemical candidate pool was limited to those chemicals with WMPT scores of 8 or 9 (on a scale of 3 to 9). For a more detailed description of the WMPT development process, see USEPA, ''Waste Minimization Prioritization Tool Background Document for the Tier III PBT Chemical List,'' 2000. The specific use of the current version of the WMPT rankings in developing the RCRA Prioirity Chemicals List is documented in the Tier III Chemical List Docket.

[67] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.4.

Chemicals List[68] from the WMPT scoring. Thus, we assigned constituents that scored an eight or nine to the high hazard category—Category A.

Next, we considered whether any of the remaining constituents, those that did not receive a WMPT score of 8 or 9, present additional concerns for materials managed as comparable fuels. We did this by further analyzing the data that WMPT used to generate Human Toxicity scores for the remaining constituents. We first identified constituents that had WMPT human toxicity scores based on inhalation as the driving exposure pathway. This is an appropriate screening criterion given that the inhalation pathway is particularly important for evaluating the hazard posed by air emissions. For such constituents, we then determined whether they posed a relatively high human toxicity hazard or were a known human carcinogen. If so, we assigned the constituent to hazard Category B.

We assigned all other constituents to hazard Category C.[69]

B. What Are the Results of the Relative Hazard Ranking?

We assigned 11 constituents to Category A—the high hazard constituents. These are constituents that had WMPT scores of eight or nine, consistent with the Agency's procedures for identifying priority chemicals. Because the WMPT methodology assigns all PAHs the highest score for any PAH, we assigned a score of nine to all PAHs. Ten of the 11 Category A constituents are PAHs. The only Category A constituent that is not a PAH, but that scored an eight or nine, was naphthalene.

In evaluating constituents to assign to hazard Category B, we identified three constituents that have WMPT human toxicity scores based on inhalation as the driving exposure pathway: Benzene, acrolein, and phenol.

Benzene is a known human carcinogen via the inhalation exposure pathway. There are some chemicals with sufficiently robust toxicological databases that the Agency not only generates a carcinogenic slope factor, but also designates them ''known human carcinogens.'' Consequently, we believe it is reasonable to assign benzene to Category B to restrict the feedrate (and thus emissions) of this compound.

Acrolein has a WMPT human toxicity score of three because it has very high inhalation toxicity. Acrolein did not have a higher aggregate WMPT score because it had a low bioaccumulation score. Nonetheless, exposure via inhalation is of particular importance in the context of assessing the hazard posed by emissions from burning ECF. Consequently, we believe it is reasonable to assign acrolein to Category B.

We did not assign phenol to Category B because it has significantly lower toxicity than benzene and acrolein. Phenol has a WMPT human toxicity score of two, rather than the highest score of three. Further, phenol is not known to be a carcinogen. EPA has classified phenol as a Group D carcinogen—not classifiable as to human carcinogenicity, based on a lack of data concerning carcinogenic effects in humans and animals. Consequently, we do not believe that phenol should be assigned to hazard Category B even though its WMPT human toxicity score is based on the inhalation pathway. The remaining constituents were assigned to Category C.

C. What Firing Rate Restrictions Would Apply to Benzene and Acrolein?

As discussed above, we believe that benzene and acrolein pose a lower hazard than PAHs and naphthalene, but a greater hazard than the other hydrocarbons and oxygenates for which the specifications would not apply for ECF. Accordingly, we propose to restrict the firing rate of ECF that has benzene or acrolein concentrations exceeding 2% by weight, as-fired, to 25% of the heat input to the boiler (on a heat input or volume input basis, which ever results in the lower volume of ECF).

This ECF firing rate restriction would reduce the feedrate of benzene and acrolein and thus ensure that emissions of these compounds remain at levels comparable to emissions from burning fuel oil in industrial boilers and protective of human health and the environment. Absent this firing rate restriction, ECF with high concentrations of benzene or acrolein could be fired at a 50% firing rate—the remaining 50% of the fuel must be primary fossil fuel or equivalent. Thus, the 25% firing rate restriction would reduce the feedrate of benzene and acrolein by half.

We selected a 25% firing rate restriction because it is in the middle of the range of values that could have been reasonably considered—10% to 40%—given that the maximum firing rate for any ECF is 50%. We selected a 2% or greater benzene concentration as the criterion for applying the firing rate restriction because selecting a lower concentration cutpoint would restrict the composite benzene concentration in total fuels to levels lower than would be allowed if comparable fuel were burned as 100% of the boiler fuel. Specifically, we assumed that comparable fuel would generally have a heating value of at least 10,000 Btu/lb if it were to comprise 100% of the boiler's fuel. The comparable fuel specification would allow a benzene concentration of 4,100 mg/kg (or 0.41%) for a 10,000 Btu/lb fuel. We further assumed the upper range of heating values for the comparable fuel would be 18,000 Btu/lb. At that heating value, the comparable fuel could contain 7,400 mg/kg (or 0.74%) benzene.

We then determined the benzene concentration in ECF fired at a 25% firing rate as a supplement to fuel oil that would result in a composite fuel benzene concentration equivalent to the levels allowed if existing comparable fuel were 100% of the boiler fuel. Virtually all of the benzene would be contributed by the ECF because fuel oil contains negligible benzene.[70] At a 25% firing rate, the benzene concentration in a 10,000 Btu/lb ECF would need to exceed 1.6% for the benzene concentration in the composite fuels (i.e., ECF and fuel oil) to exceed 4,100 mg/kg, the benzene concentration in the fuel if 10,000 Btu/lb comparable fuel were fired as the sole fuel burned. Similarly, at a 25% firing rate, the benzene concentration in an 18,000 Btu/lb ECF would need to exceed 3% for the benzene concentration in the composite fuels to exceed 7,400 mg/kg, the benzene concentration in the fuel if 18,000 Btu/lb comparable fuel were fired as the sole fuel burned.

Consequently, the reasonable range of ECF benzene concentrations for selecting the cutpoint to apply the 25% firing rate restriction is 1.6% to 3%.[71] We are proposing a cutpoint of 2% because it generally correlates to the average heating value of waste fuels—11,000 Btu/lb.[72]

[68] See: *http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist.htm.*

[69] We also qualitatively assessed the five constituents with insufficient data to generate complete, aggregate WMPT scores. Even assuming worst-case values for their human toxicity score, none of these constituents would have qualified for Category A or B. Thus, we assigned them to Category C.

[70] The comp fuel benzene spec in 261.38 (4,100 mg/kg at 10,000 Btu/lb) is based on levels of benzene in gasoline. Benzene in crude oil is concentrated in refined fractions, such as gasoline.

[71] Expanding the fuel heating value range from 8,000 Btu/lb (the lowest heating value allowed for ECF) to 20,000 Btu/lb (the highest heating value known for waste fuels that may qualify as ECF) would expand the benzene concentration cutpoint range to 1.3% to 3.3%.

[72] If we assumed comparable fuel has the average heating value in our data base—11,200 Btu/lb—the benzene concentration cutpoint would be 1.8%.

We then considered what cutpoint we should propose for acrolein. We are proposing a 2% concentration cutpoint for acrolein as well because: (1) Acrolein poses hazards similar to benzene and there is no basis for being more or less stringent on the allowable composite fuel concentrations; and (2) a 2% cutpoint would not control acrolein in ECF more stringently than it is controlled in comparable fuel (i.e., ECF fired at a 25% firing rate as a supplement to fuel oil and with an acrolein concentration of 2% would not result in a composite fuel acrolein concentration lower than that allowed if the boiler burned 100% existing comparable fuel at the maximum allowable acrolein concentration).

We specifically request comment on whether ECF firing rate restrictions are warranted for benzene and acrolein, and if so, whether the proposed restrictions are appropriate. Any such comment must include an appropriate rationale and supporting information in order for the Agency to be able to consider it for final action.

IV. What Conditions Would Apply to Storage of ECF?

A. What Are the Proposed Storage Conditions?

The proposed exclusion for ECF would also be conditioned on meeting the storage controls applicable to the closest analogous raw material/product—fuel oil—plus a few additional controls considered appropriate to minimize the potential for releases to the environment. The additional controls would include ''engineered'' secondary containment and fugitive air emission controls.

Although we are proposing generally to apply storage controls applicable to the closest analogous raw material/product—fuel oil, the exclusion would be conditioned on more substantial ''engineered'' secondary containment than several of the permissible secondary containment methods for oil under the Spill Prevention, Control, and Countermeasure (SPCC) provisions. Examples of SPCC secondary containment provisions applicable to oil include the use of dikes, berms, retaining walls, spill diversion ponds and sorbent materials. We are proposing to apply a more substantial ''engineered'' secondary containment condition, such as double-walled tanks because we believe it important that such secondary containment address potential releases to groundwater. Today's proposed controls on air releases are based on those applicable to another comparable product, organic liquids at the chemical plants which often generate ECF.

These controls are appropriate considering that ECF can contain higher concentrations of certain hazardous, volatile hydrocarbons and oxygenates than fuel oil, and so though product-like, is not precisely analogous. Consequently, ECF has a higher potential for releases to the environment and a higher potential for those releases to cause environmental harm. Therefore, we are proposing storage and recordkeeping controls to ensure that ECF is not managed so as to become ''part of the waste disposal problem''. *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990).

We are also proposing that ECF be stored only in tanks (including USTs), tank cars, and tank trucks. ECF could not be stored in other containers (e.g., portable devices, such as 55 gallon drums) because: (1) We believe that ECF would be generated in quantities that would make storage in portable devices other than tank cars and tank trucks impractical; and (2) providing conditions to ensure adequate monitoring, inspections and air emission controls for storage in other containers would unnecessarily complicate the rule. Nonetheless, we request comment on whether ECF would likely be stored in vessels other than tanks, tank cars and tank trucks (e.g., drums positioned to collect process drippage that is eventually consolidated with ECF in acceptable tank, tank car, or tank truck). If so, and if a final rule were to allow storage in containers other than tank cars and tank trucks, we would subject those units to management conditions similar to those that apply to hazardous waste containers under subpart I, Part 265, control releases.

1. Tank Systems, Tank Cars and Tank Trucks

a. SPCC Discharge Prevention Requirements.[73] For ECF tank systems, tank cars, and tank trucks, we are proposing to condition the exclusion on meeting certain of the discharge prevention provisions which apply to fuel oil, or are adapted therefrom. These are from the Spill Prevention, Control, and Countermeasure (SPCC) provisions under 40 CFR Part 112 that apply to petroleum oils managed at onshore facilities. ECF generators and burners would comply with these conditions, as adopted under § 261.38(c)(1)(iii), as though ECF met the definition of oil under § 112.2.[74] These adopted SPCC provisions would apply to all owners and operators of ECF tanks with a capacity greater than 55 gallons.[75]

The SPCC requirements under Part 112 include both discharge prevention requirements and requirements to ensure effective responses to discharges. The discharge prevention requirements for onshore petroleum oil tanks are implemented under a SPCC Plan and associated requirements under §§ 112.1 through 112.8, and the discharge response requirements are implemented under a Facility Response Plan (FRP) and associated requirements under §§ 112.20 and 112.21. We propose to adopt specific provisions of the discharge prevention requirements—the SPCC Plan—under §§ 112.3, 112.5, 112.7, and 112.8 only. We are not proposing to adopt the FRP and associated requirements, as discussed below in Section IV.A.1.c. In lieu of the FRP requirements, we are proposing to adopt more appropriate provisions that apply to hazardous waste tank systems and that achieve the same objective as the FRP requirements—specifying proactive measures to respond to a release of ECF.

We propose to adopt the following SPCC Plan requirements under § 261.38(c)(1)(iii) to prevent ECF releases from tank systems:

- Section 112.2, Definitions.[76]
- Sections 112.3(d) and 112.3(e), Requirements to Prepare and Implement an SPCC Plan. Paragraph (d) requires that a licensed Professional Engineer must review and certify the Plan, and paragraph (e) requires that a copy of the Plan must be maintained at the facility and be available to the Regional

[73] The SPCC conditions we propose to adopt would apply to ECF tanks systems that are not hazardous substance underground storage tanks subject to § 280.42(b), as well as tank cars and tank trucks.

[74] This proposed rule would neither amend nor otherwise affect the SPCC provisions under 40 CFR Part 112. Substantive controls from the SPCC rules would merely be applied to tanks storing ECF as a condition of those fuels being excluded from RCRA subtitle C controls.

[75] We note that the SPCC requirements under Part 112 do not apply to facilities that have both an aggregate capacity for completely buried storage of 42,000 gallons or less of oil and an aggregate capacity for above ground storage of 1,320 gallons or less of oil. See § 112.1(d)(2). In addition, the SPCC requirements do not apply to containers with a storage capacity of less than 55 gallons of oil. We propose to adopt the 55 gallon capacity criterion for applicability of the adopted SPCC provisions to ECF tanks, but propose to apply those SPCC provisions to tanks with a capacity greater than 55 gallons at all facilities managing ECF, irrespective of whether the aggregate tank capacity for oil and ECF is below the threshold in § 112.1(d)(2). Applying the adopted SPCC provisions to all ECF tanks with a capacity greater than 55 gallons, irrespective of aggregate oil and ECF storage capacity at a facility, is appropriate because ECF can pose a greater storage hazard than petroleum oil, as discussed previously.

[76] These SPCC definitions would apply only to the adopted SPCC provisions.

Administrator for on-site review. We are not adopting paragraphs (a), (b), (c), (f), or (g), which pertain to compliance dates for plan preparation and implementation and self-certification of the plan. Because the ECF exclusion is optional and conditional, we are proposing that all conditions in § 261.38 must be met before ECF can be managed under the conditional exclusion being proposed today. Therefore we are not adopting any of the compliance dates provided in the SPCC regulations. Also, we propose not to allow self-certification of Plans in lieu of certification by a Professional Engineer, as allowed under § 112.6, for those facilities with an aggregate aboveground tank capacity of 10,000 gallons or less, a provision the Agency recently promulgated.[77] We are proposing not to adopt § 112.6 because of the greater hazard that a release of ECF may pose. We do not view certification of the Plan by a Professional Engineer as an unreasonable burden, and believe that the value added to ensure that the Plan is complete, accurate, and appropriate to prevent releases is warranted given the hazards that ECF may pose. A more important consideration is that we do not believe that facilities with ECF tanks would meet the primary eligibility criterion for self-certification: the aggregate oil and ECF tank capacity must be less than 10,000 gallons. Therefore, this provision would add complexity and burden for States and EPA in implementation and enforcement with little or no off-setting benefits. Nonetheless, we specifically request comment on whether there may be facilities that store ECF in tanks that could meet the eligibility criterion and whether self-certification of the SPCC Plan would be appropriate.

- Sections 112.5(a) and 112.5(b), Amendment of SPCC Plan by Owners or Operators. This section requires that the Plan be amended by the owner or operator in accordance with the general requirements in § 112.7 when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. This section also states that owners or operators must complete a review and evaluation of the SPCC Plan at least once every five years from the date the facility becomes subject to this part, and that any technical amendments to the Plan must be certified by a Professional Engineer. We propose to adopt paragraphs (a) and (b), but not paragraph (c). Paragraph (c) requires certification of technical amendments to the Plan and references § 112.6 which allows self-certification in lieu of certification by a Professional Engineer. Given that we propose not to adopt § 112.6 as discussed above, we propose a condition that would require technical amendments to be certified by a Professional Engineer.
- Section 112.7, General Requirements for Spill Prevention, Control, and Countermeasure Plans. We propose to adopt § 112.7, except for paragraph (c) secondary containment, paragraph (d) alternative requirements in lieu of secondary containment, and paragraph (k) alternative requirements in lieu of secondary containment for qualified oil-filled operational equipment. These paragraphs would not be applicable because they pertain to secondary containment which we propose to require under separate conditions. See discussion below. The § 112.7 conditions we are proposing to adopt are paragraph (a) which requires a discussion of the facility's conformance with the requirements included in § 112.7, and development of the Plan; paragraph (b) which requires a prediction of the direction, rate of flow and total quantity of material which could be discharged when experience indicates a potential for equipment failure, overflow, rupture or leakage; paragraph (e) which addresses conducting inspections and tests and keeping records; paragraph (f) which addresses personnel, training, and discharge prevention procedures; paragraph (g) which addresses security requirements; paragraph (h) which addresses facility tank car and tank truck loading/unloading rack requirements; paragraph (i) which requires a brittle fracture evaluation [78] if a tank undergoes a change in service that might affect the risk of a discharge; and paragraph (j) which states that the Plan must include a complete discussion of conformance with the requirements in this part, as well as applicable more stringent State rules, regulations and guidelines.
- Section 112.8, Spill Prevention, Control, and Countermeasure Plan Requirements for Onshore Facilities (excluding production facilities). We are proposing to adopt § 112.8, except for: Paragraph (b), facility drainage; paragraph (c)(2), secondary containment for bulk storage containers; paragraph (c)(9), prevention of releases from effluent treatment facilities; and paragraph (c)(11), secondary containment for mobile and portable containers. These provisions are not warranted because we are proposing separate conditions for secondary containment, as discussed below. The conditions we are proposing to adopt from this section are paragraph (a) which states that the owner or operator meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section; paragraph (c)(1) which states that a tank not be used for storage unless its material and construction are appropriate; paragraph (c)(3) which addresses the drainage of uncontaminated rainwater or effluent bypassing the facility treatment system; paragraph (c)(4) which states that any completely buried metallic storage tank installed on or after January 10, 1974 be protected from corrosion and regularly leak test such storage tanks;[79] paragraph (c)(5) which states that partially buried or bunkered metallic tanks not be used for storage unless you protect the buried section of the tank from corrosion; paragraph (c)(6) which states that each aboveground tank be tested for integrity on a regular schedule and whenever material repairs are made and that the outside of the tanks be inspected frequently for signs of deterioration, discharges, or accumulation of ECF inside diked areas; paragraph (c)(7) which states that leakage through defective internal heating coils be controlled by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system; paragraph (c)(8) which states that the tank system be engineered or updated in accordance with good engineering practice to avoid discharges (e.g., overfill prevention); paragraph (c)(10) which states that visible discharges from tanks, tank cars, and tank trucks be promptly corrected; and paragraph (d) which addresses provisions regarding facility transfer operation, pumping, and facility process. We are not proposing to adopt the provision which requires that buried piping be provided with a protective wrapping and coating only if the buried piping is installed or replaced on or after August 16, 2002. Rather, we propose to apply this provision to all buried piping. This is because ECF can pose a greater hazard than oil, and in particular, because leaks of the

[77] See 71 FR 77266, December 26, 2006.

[78] This requirement only applies to field erected aboveground storage tanks.

[79] We request comment on whether we should specify that completely buried metallic storage tanks installed prior to January 10, 1974 must be protected from corrosion and regularly leak checked.

hazardous organic compounds present in ECF are more likely than oil to sink into the ground and surrounding water, and therefore create a greater hazard.

We are not proposing to adopt § 112.4, Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. That section requires the owner/operator of a facility that has discharged more than 1000 gallons of oil in a single discharge or more than 42 gallons of oil in each of two discharges in any 12 month period to submit a report to the Regional Administrator (RA) that provides information including the corrective action and countermeasures taken, the cause of the discharge, and preventive measures to minimize the possibility of recurrence. That section also allows the RA to require the owner/operator to amend the Plan if the RA determines that the Plan does not meet the requirements of Part 112 or amendment is necessary to prevent and contain discharges from the facility. Finally, that section prescribes procedures that the owner/operator may use to appeal the RA's decision to require an amendment to the Plan. We are not proposing to adopt § 112.4 because: (1) Given that ECF tanks would be required to be equipped with engineered secondary containment (as discussed below), we would not expect releases from ECF tanks of the magnitude that would trigger a report under § 112.4; (2) the proposal already contains a provision that the owner/operator must amend the Plan upon a finding by the RA that amendment is necessary to prevent and contain releases of emission-comparable fuel (see proposed § 2613.8(c)(1)(iii)(B)(*3*)), and this provision would not include prescribed appeal provisions given that the ECF exclusion is elective [80]; and (3) the proposal already contains a provision that the owner/operator must submit a report to the RA within 24 hours of detection of any release of ECF to the environment, except de minimis leaks (i.e., less than or equal to one pound) that are immediately contained and cleaned-up (see Section IV.A.1 below, and proposed § 261.38(c)(1)(v)(C)).

b. Containment and detection of releases. Preventing the release of hazardous secondary materials, such as ECF, to groundwater is one of the primary exposure routes to be addressed under RCRA; the SPCC secondary containment requirements primarily address the release of oil to surface waters. In addition, because ECF can have higher concentrations of certain hazardous hydrocarbons and oxygenates, it can pose a greater hazard to human health and the environment than fossil fuel if released to the environment. Therefore, we believe that the secondary containment requirements in the SPCC rule are not adequate for ECF. Thus, we are proposing engineered secondary containment for the storage of ECF in tank systems.

Engineered secondary containment means the use of an external liner, vault, or double-walled tank. We note that two states—Florida and Minnesota—require some form of engineered secondary containment for fuel oil and do not allow the ''non-engineered'' options allowed by SPCC (e.g., ponds, weirs, and absorbent materials).[81] However, we have decided to propose the substantive engineered secondary containment provisions provided by the hazardous waste rules for tank systems under § 264.193(b–f). Although we recognize they are somewhat more prescriptive than those required by Florida and Minnesota, we believe that persons likely to use this exclusion are likely to use the same tanks in which the hazardous secondary material is currently stored and thus, the facility would not need to retrofit the design of these tanks. However, the Agency does solicit comments on whether an alternative ''engineered'' secondary containment system that may not provide containment equivalent to an external liner, vault, or double-walled tank would also be appropriate.

We propose to adopt the following requirements:

- Section 264.193(b), which prescribes general performance standards for secondary containment systems;
- Section 264.193(c), which prescribes minimum requirements for secondary containment systems;
- Sections 264.193(d)(1–3), which prescribe permissible secondary containment devices—external liner, vault, or double-walled tank. We are not proposing to adopt § 264.193(d)(4), which allows approval by the Regional Administrator of an equivalent device, because the exclusion is designed to be self-implementing. Nevertheless, we request comment on whether the final rule should allow approval of equivalent means of secondary containment to avoid stifling innovation (and potentially having to revise the rule to allow alternative means we believe are appropriate). In providing comments on this issue, we would ask that commenters specifically describe how this provision could work, considering that the rule is designed to be a self-implementing regulation;
- Section 264.193(e), which prescribes design and operating requirements for the permissible secondary containment devices; and
- Section 264.193(f), which prescribes secondary containment requirements for ancillary equipment.

To comply with the adopted hazardous waste tank secondary containment provisions, we propose that the term ''emission-comparable fuel'' be substituted for the term ''waste,'' and that the term ''document in the record'' be substituted for the term ''demonstrate to the Regional Administrator.'' Demonstrations to the Regional Administrator to obtain a waiver are allowed for hazardous waste tank systems in the following situations:

- Section 264.193(c)(3), where the owner or operator can demonstrate to the Regional Administrator that the leak detection system or site conditions will not allow detection of a release within 24 hours;
- Section 264.193(c)(4), where the owner or operator can demonstrate to the Regional Administrator that removal of released materials or accumulated precipitation cannot be accomplished within 24 hours; and
- Section 264.193(e)(3)(iii), where the owner or operator can demonstrate to the Regional Administrator that the leak detection technology for a double-walled tank or site conditions would not allow detection of a release within 24 hours.

As mentioned above, site-specific approval of an alternative provision is inconsistent with the self-implementing provisions of a regulatory exclusion. Consequently, we propose to require the owner or operator to document in the record the basis for not being able to comply with those provisions within 24 hours, as nominally required. This information will be available for review by the Regional Administrator.

We are not proposing to adopt §§ 264.193(g) and 264.193(h) because those provisions provide procedures to support and request a variance from secondary containment. Again, substantive variance provisions cannot be implemented under a self-implementing regulatory exclusion.

Finally, we are not proposing to adopt § 264.193(i) which allows for alternative secondary containment until a facility can comply with the requirements of §§ 264.193(b–f). We do not believe that § 264.193(i) is appropriate because the

[80] Even though we are not proposing prescribed appeal provisions, the owner/operator could certainly explain and clarify why the Plan already addresses concerns the RA may express in a requirement to amend the Plan.

[81] See Florida Administrative Code at 62-762.501, and Minn. R. Ch. at 7151.5400.

proposed ECF exclusion is not a mandated provision; owners and operators that elect to take advantage of the exclusion should be in compliance with all of the requirements necessary to protect human health and the environment before managing excluded ECF.

c. *Preparedness and Prevention, Emergency Procedures, and Response to Leaks or Spills.* We considered whether to adopt the Facility Response Plan (FRP) provisions applicable to fuel oil tanks under §§ 112.20 and 112.21 that require proactive responses to oil discharges, but believe that they are not appropriate for tanks that handle ECF. The FRP requirements are tailored to oil discharges and may not be appropriate for ECF, given that, for example, ECF may contain high concentrations of hazardous compounds that behave in the environment as a dense nonaqueous phase liquid and therefore do not float on the water surface. In addition, the FRP requirements are designed to respond to discharges of oil to navigable waters and adjoining shorelines (i.e., through the use of sorbents, booms, and skimmers). In contrast, today's proposed rule is designed to equip ECF tanks with engineered secondary containment (i.e., external liner, vault, or double-walled tank), as discussed above in order to control and prevent releases to the environment. Consequently, we believe it is appropriate to adopt certain hazardous waste tank provisions that provide proactive measures to respond to a release of ECF. We specifically request comment on our view that the Part 112 FRP requirements would not provide effective measures to respond to releases of ECF, and whether there may be release response provisions applicable to other products that may be more appropriate to adopt for ECF than the hazardous waste tank provisions that we discuss below.

We propose to adopt certain provisions of Subparts C and D of Part 264 and § 264.196 [82] to provide proactive measures to respond to a release of ECF: preparedness and prevention; emergency procedures; and response to leaks or spills. See proposed § 261.38(c)(1)(v).

The Part 64, Subpart C and D provisions are similar to some of the proactive requirements under the Part 112 FRP and in some cases are virtually identical to the FRP provisions. The specific Subpart C (Preparedness and Prevention) provisions we propose to adopt are discussed below. These are commonsense provisions that should represent standard operating practice for facilities that store liquid fuels:

- Section 264.32, Required Equipment. All provisions of this section are appropriate for ECF tank systems: requirements for an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel; a device such as a telephone or two-way radio capable of summoning emergency assistance; portable fire extinguishers, fire control equipment, spill control equipment and decontamination equipment; and water at adequate volume and pressure, or foam producing equipment, or automatic sprinklers, or water spray systems.
- Section 264.33, Testing and Maintenance of Equipment. This section requires that all communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment must be tested and maintained as necessary to assure its proper operation in case of emergency.
- Section 264.34, Access to Communications or Alarm System. We propose to adopt this section to specify that, whenever ECF is distributed into or out of a tank system, all personnel involved in the operation must have access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee.
- Section 264.37, Arrangements with Local Authorities. We propose to adopt this section to specify that the owner or operator must attempt to make arrangements with the appropriate local authorities (fire departments, emergency response teams, police departments, hospitals, etc.) to familiarize the authorities with the layout of the facility, properties of the ECF being managed at the facility, possible evaluation routes, and types of injuries which could result from fires, explosions, or releases at the facility. If State or local authorities decline to enter into such arrangements, the owner or operator must document this refusal in the facility's record.

The specific Part 264, Subpart D (Contingency Plan and Emergency Procedures) provisions we propose to adopt are: [83]

- Section 264.55, Emergency Coordinator. We propose to adopt this provision to specify that, at all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's Spill Prevention, Control, and Countermeasures (SPCC) Plan, all ECF operations and activities at the facility, the location and characteristics of ECF handled, the location of all records within the facility pertaining to ECF, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the SPCC Plan.
- Section 264.56, Emergency Procedures. We propose to adopt this provision to specify that: (1) Whenever there is an imminent or actual emergency situation relating to the ECF tank system, the emergency coordinator must immediately activate internal facility alarms or communication systems, where applicable, to notify all facility personnel and notify appropriate State or local agencies with designated response roles if their help is needed; (2) whenever there is a release, fire, or explosion relating to the ECF tank system, the emergency coordinator must immediately identify the character, exact source, amount, and aerial extent of any released materials; (3) the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion; (4) if the emergency coordinator determines that the facility has had a release, fire, or explosion associated with the ECF tank system which could threaten human health, or the environment outside the facility, he must report his findings to the government official designated as the on-scene coordinator for that geographical area or the National Response Center; (5) if the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities; (6) during an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other materials at the facility; (7) if the ECF tank system stops operations in response to a fire,

[82] As discussed later in the text, the § 264.196 provisions specifically address failures of the types of engineered secondary containment (i.e., external liner, vault, or double-walled tank) that we propose to specify for ECF tanks. Thus, adopting these provisions in lieu of the Part 112 RFP provisions, which address discharge countermeasures (e.g., absorbents, booms, skimmers, and dispersants) more appropriate for other types of secondary containment, is particularly appropriate.

[83] We are not proposing to adopt the Subpart D contingency plan provisions because the SPCC Plan that we propose to specify as a condition of the exclusion is equivalent to the contingency plan required for hazardous waste tank facilities.

explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate; (8) immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered ECF, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility;[84] (9) the emergency coordinator must ensure that, in the affected area(s) of the facility, materials that may be incompatible with the released ECF is treated, stored, or disposed of until cleanup procedures are completed and all emergency equipment listed in the SPCC Plan is cleaned and fit for its intended use before operations are resumed; and (10) the owner or operator must note in the record the time, date, and details of any incident that requires implementing the SPCC Plan for the ECF tank system and within 15 days after the incident, the owner or operator must submit a written report on the incident to the Regional Administrator.

We propose to adopt the provisions under § 264.196 (Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems), except for §§ 264.196(e)(1) and (e)(4), for all ECF tank systems not subject to the hazardous substance underground storage tank requirements of § 280.42(b). To comply with the adopted provisions of § 264.196, you would substitute the term ''emission-comparable fuel'' for the terms ''hazardous waste'' and ''waste,'' and the term ''record'' for the term ''operating record.'' The adopted provisions would specify that an ECF tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following conditions: (1) The owner or operator must immediately stop the flow of ECF into the tank system or secondary containment system and inspect the system to determine the cause of the release; (2) if the release was from the tank system, the owner/operator must, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the ECF as is necessary to prevent further release of ECF to the environment and to allow inspection and repair of the tank system to be performed; (3) if the ECF released was to a secondary containment system, all released ECF must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment; (4) the owner/operator must immediately conduct a visual inspection of the release and, based upon that inspection prevent further migration of the leak or spill to soils or surface water and remove, and properly dispose of, any visible contamination of the soil or surface water; (5) any release to the environment, except de minimis leaks (i.e., less than or equal to one pound) that are immediately contained and cleaned-up must be reported to the Regional Administrator within 24 hours of its detection; (6) within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Regional Administrator—likely route of migration of the release, characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate), results of any monitoring or sampling conducted in connection with the release (if available), proximity to downgradient drinking water, surface water, and populated areas, and description of response actions taken or planned; (7) the tank system must be closed unless the cause of the release was a spill that has not damaged the integrity of the system and the released material is removed and repairs, if necessary, are made, or unless the cause of the release was a leak from the primary tank system into the secondary containment system and the system is repaired; and (8) if the owner/operator has repaired a tank system and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling ECF without release for the intended life of the system.

We are not proposing to adopt § 264.196(e)(1) because that paragraph would require the tank to be closed under the § 264.197 provisions for closure of a hazardous waste tank. Those provisions are inappropriate for closure of a tank that stored a product—ECF. As provided under proposed § 261.38(b)(13), when ECF operations cease, liquid and accumulated solid residues that remain in a tank system for more than 90 days after the tank system ceases to be operated for storage of ECF are subject to regulation under Parts 262 through 265, 268, 270, 271, and 124. In addition, liquid and accumulated solid residues that are removed from an ECF tank system after the tank system ceases to be operated for storage of ECF are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§ 261.21–261.24 or if the ECF was derived from a hazardous waste listed under §§ 261.31–261.33 when the exclusion was claimed.

Finally, we are not proposing to adopt § 264.196(e)(4) because that paragraph addresses tanks that are not equipped with secondary containment. We are proposing that all ECF tanks must be equipped with secondary containment prior to managing ECF.

d. Air Emissions. As mentioned above, ECF can contain higher levels of certain hazardous, volatile hydrocarbons and oxygenates than found in fuel oil. In this regard, ECF is more analogous to organic liquids typically present in organic chemical production operations than they are to fuel oil. Therefore, we believe it appropriate to condition the exclusion on meeting air emission controls which apply to those organic liquids to prevent the release of one or more of these chemicals to the environment. To this end, we are proposing to adopt virtually all of the provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Organic Liquids Distribution (OLD) under Subpart EEEE, Part 63 as RCRA § 261.38 conditions to control the fugitive air emissions from ECF tank systems.[85] Note that there are no provisions of this proposed rule that would impose new or additional CAA Title V obligations on ECF generators or burners.

ECF would already be subject to the OLD NESHAP if certain applicability requirements are met, including: (1) The facility must be a major source; (2) the ECF must contain greater than 5% of the organic HAP listed in Table 1 to Subpart EEEE; (3) the facility is not subject to another NESHAP;[86] and (4) certain tank size and HAP vapor pressure criteria are met. Thus, we are proposing not to

[84] ECF that is released from the tank system must generally be managed as hazardous waste. See proposed § 261.38(b)(15).

[85] This subpart establishes emission limitations, operating limits, and work practice standards for organic hazardous air pollutants (HAP) emitted from organic liquids distribution (OLD) (non-gasoline) operations at major sources of HAP emissions for facilities that are not subject to another NESHAP. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations, operating limits, and work practice standards.

[86] The subpart EEEE controls are intended to be generic, catch-all controls for air emissions from storage and transfer of organic liquids at facilities that are not already subject to a specific NESHAP.

apply the OLD controls—that we are proposing to adopt under § 261.38 [87]—to ECF tanks that are subject to the OLD controls under § 63.2346, with one exception. We are proposing to apply adopted conditions for any ECF tanks that would not be subject to the controls provided by item 6 in Table 2 to Subpart EEEE because the vapor pressure of the regulated organic HAP does not exceed 76.6 kPa. Specifically, item 6 in Table 2 provides controls for existing and new tanks with a capacity greater than 5,000 gallons if the organic liquid has an annual average true vapor pressure of the organic HAP listed in Table 1 to Subpart EEEE equal to or greater than 76.6 kilopascals (kPa). However, 16 RCRA oxygenates [88] for which comparable fuel specifications have been established in Table 1 to § 261.38 are not listed as CAA hazardous air pollutants in Table 1 to Subpart EEEE (reflection CAA section 112(b)(1)). Further, 11 of these oxygenates have vapor pressures that could contribute significantly to the total vapor pressure of hazardous organics in ECF.[89] Thus, these RCRA oxygenates could potentially increase the vapor pressure of the ECF so that it exceeds 76.6 kPa, the criterion for requiring more stringent controls under item 6 in Table 2 to Subpart EEEE. For this reason, we propose to specify that tanks which are subject to OLD but that are not subject to the requirements under item 6 in Table 2 to Subpart EEEE must consider the vapor pressure of the 11 RCRA oxygenates that have vapor pressures that could significantly contribute to the total vapor pressure, as well as the organic HAP listed in Table 1 to Subpart EEEE in determining whether the vapor pressure would be equal to or exceed 76.6 kPa. See proposed § 261.38(c)(1)(ii)(C)(*1*)(*ii*). If so, we are proposing that the tank must comply with the § 261.38 adopted OLD requirements for tanks storing organic liquids with a vapor pressure equal to, or exceeding, 76.6 kPa. We specifically request comment on this proposed condition. In addition, although we believe that there would be very few ECF tanks that would be placed in this circumstance, we specifically request comment on how to avoid dual CAA and RCRA regulation of any such tanks—tanks that are already subject to OLD as promulgated at Subpart EEEE, Part 63, but which would also need to comply with (more stringent) OLD requirements adopted under RCRA § 261.38 as a condition for the ECF exclusion.

For tanks that are not already subject to the OLD controls under § 63.2346, we are proposing to adopt appropriate Subpart EEEE provisions under § 261.38 as a condition of the ECF exclusion. See discussion below where we propose to adopt virtually all of the Subpart EEEE provisions. These adopted provisions would in no way affect Subpart EEEE and would be implemented and enforced under RCRA authority (e.g., controls under the adopted provisions would not be included in a facility's Title V permit, and a facility would not be required to obtain a Title V permit to comply with these provisions).[90] Our principles for proposing to adopt the OLD provisions under § 261.38 include: (1) Air emissions from ECF tanks should be controlled to a level comparable to levels currently required given that air emissions from storage and handling of ECF can pose the same hazards as storage and handling of the hazardous waste; and (2) the 11 hazardous RCRA oxygenates that have significant vapor pressure, as discussed above, should be considered as well as the organic HAP in Table 1 to Subpart EEEE in determining whether ECF meets the OLD definition of organic liquid and in determining the level of control specified by Table 2 to Subpart EEEE.

We discussed above that 11 of the hazardous RCRA oxygenates for which the comparable fuel specifications would no longer apply and that are not classified as CAA HAP can potentially contribute significantly to the vapor pressure of ECF. Given that vapor pressure of the hazardous organic constituents is a criterion for determining whether the ECF meets the OLD definition of organic liquid (which we propose to adopt in revised form under § 261.38(c)(1)(ii)(C) as discussed below) and the level of emission control required under § 63.2346 (which we also propose to adopt), it is appropriate to require owners and operators to consider these 11 RCRA oxygenates when complying with the adopted OLD provisions.

We also reviewed the OLD provisions to determine whether the controls would be comparable to those currently required for the hazardous waste from which the ECF will be derived. Assurance of comparable controls is warranted given that air emissions from storage and handling of ECF can pose the same hazards as storage and handling of the parent hazardous waste. We determined that adopting the OLD provisions would result in air emission controls comparable to current controls in most situations, with four exceptions: (1) ECF tanks at facilities that are area sources; (2) existing, reconstructed, or new ECF tanks with a capacity less than 5,000 gallons handling ECF with a RCRA oxygenate and organic HAP vapor pressure equal to or greater than 76.6 kPa; (3) existing ECF tanks with a capacity in the range of 5,000 gallons to 50,000 gallons handling ECF with a RCRA oxygenate and organic HAP vapor pressure in the range of 5.2 kPa to 76.6 kPa; and (4) ECF tanks at facilities that are subject to a NESHAP other than Subpart EEEE, unless the tanks at these facilities have comparable air emission controls.[91] We are proposing to adopt the OLD provisions under § 261.38 in a manner that addresses these situations and thus ensures adequate control of air emissions from ECF tanks. We specifically request comment on these proposed conditions:

- The OLD provisions apply only to major sources.[92] Although we do not believe that many ECF tanks will be located at area sources given that we expect the manufacturing sector to generate and burn the majority of the ECF, controls should be maintained at facilities that may be area sources. Consequently, we propose to apply the adopted OLD controls to both area and

[87] As discussed later in the text in this section, we are proposing to adopt under § 261.38 for ECF tank systems virtually all of the Subpart EEEE OLD provisions.

[88] These compounds are Allyl alcohol (CAS No. 107–18–6), Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate] (CAS No.117–81–7), Butyl benzyl phthalate (CAS No. 85–68–7), Diethyl phthalate (CAS No. 84–66–2), 2,4-Dimethylphenol (CAS No. 105–67–9), Dimethyl phthalate (CAS No. 131–11–3), Di-n-octyl phthalate (CAS No. 117–84–0), Endothall (CAS No. 145–73–3), Ethyl methacrylate (CAS No. 97–63–2), 2-Ethoxyethanol [Ethylene glycol monoethyl ether] (CAS No. 110–80–5), Isobutyl alcohol (CAS No. 78–83–1), Iosafrole (CAS No. 120–58–1), Methyl ethyl ketone [2-Butanone] (CAS No. 78–93–3), 1,4-Naphthoquinone (CAS No. 130–15–4), Propargyl alcohol [2-Propyn-1-ol] (CAS No. 107–19–7), and Safrole (CAS No. 94–59–7).

[89] Five oxygenates—butyl benzyl phthalate, diethyl phthalate, dimethyl phthalate, di-n-octyl phthalate, and endothall—have vapor pressures in the range of 0.0000002 to 0.001 kPa at 25 C and would not likely contribute significantly to exceeding the 0.7 kPa threshold defining an organic liquid, or to changing the vapor pressure category for the organic liquid that could result in more stringent controls. See USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.2.

[90] Moreover, there are no provisions of this proposed rule that would impose new CAA Title V obligations.

[91] Also, as discussed previously in this section, we may regulate, in certain instances, tanks that store or handle ECF that would not be subject to the controls provided by item 6 in Table 2 to Subpart EEEE because the vapor pressure of the regulated organic HAP does not exceed 76.6 kPa.

[92] A major source is a facility that emits, facility wide, more than 10 tons per year of any single HAP or 25 tons per year of HAP in the aggregate. An affected source is an area source if it is located at a facility that is not a major source.

major sources. See proposed § 261.38(c)(1)(ii)(C)(*2*)(*i*);

• OLD does not require controls for the two tank size/vapor pressure scenarios listed above, while substantive tank air emission controls (under § 264.1084) are required for the hazardous waste from which the ECF is derived. Consequently, we propose to apply the adopted OLD controls as conditions for ECF tanks with those two tank size/vapor pressure scenarios so that they comply with the same OLD controls applicable to tanks with a capacity greater than 5,000 gallons and a vapor pressure below 76.6 kPa. See proposed § 261.38(c)(1)(ii)(C)(*2*)*(vii*); and

• As mentioned above, the OLD provisions do not apply to storage and handling of organic liquids at facilities that are subject to another NESHAP. This is the case irrespective of whether the other NESHAP establishes controls for air emissions from organic liquid distribution. Consequently, we propose to apply the adopted OLD controls to tanks (and associated equipment) at ECF tanks at a facility subject to another NESHAP, unless the owner/operator documents that the controls (on tanks that store or handle ECF) provided by the other NESHAP are at least equivalent to the controls adopted from OLD for ECF. See proposed § 261.38(c)(1)(ii)(C).

In addition, we are proposing conforming changes to implement the provisions discussed above, and specifically request comment on these proposed provisions. Specifically:

• To implement consideration of the RCRA oxygenates, substitute the term ''RCRA oxygenates as well as organic HAP'' for each occurrence of the term ''organic HAP''; the term ''RCRA oxygenates as well as organic HAP listed in Table 1'' for each occurrence of the term ''organic HAP listed in Table 1''; and the term ''RCRA oxygenates as well as Table 1 organic HAP'' for each occurrence of the term ''Table 1 organic HAP.'' See proposed § 261.38(c)(1)(ii)(C)(*2*)(*ii*).

• To implement consideration of RCRA oxygenates, we are proposing to adopt the following definition of organic liquid—Organic liquid means emission-comparable fuel that: (1) Contains 5 percent by weight or greater of the RCRA oxygenates as well as organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c); and (2) has an annual average true vapor pressure of 0.7 kilopascals (0.1 psia) or greater. See proposed § 261.38(c)(1)(ii)(C)(*2*)(*iv*).

• Defining an affected source as the collection of activities and equipment used to distribute emission-comparable fuel into, out of, or within a facility. This would simplify the Part 63 definition of affected source for purposes of the OLD provisions we propose to adopt under § 261.38. See proposed § 261.38(c)(1)(ii)(C)(*2*)*(v*); and

• Substituting the term ''subject to § 261.38(c)(1)(ii)(C)(*3*) of this chapter'' for the term ''subject to this subpart'' to facilitate implementation of the adopted OLD provisions. See proposed § 261.38(c)(1)(ii)(C)(*2*)(*vi*).

Finally, we are proposing that all notifications, reports, and communications required to implement the OLD provisions that we adopt under § 261.38 be submitted to the RCRA regulatory authority rather than the CAA regulatory authority. This is because the conditions for air emission controls are RCRA provisions adopted from the CAA OLD NESHAP. As such, they should be implemented (and enforced) under RCRA authority. We specifically request comment on this proposed provision.

As mentioned above, we propose to adopt virtually all of the provisions of the OLD NESHAP as RCRA conditions to control air emissions from storage and handling of ECF.[93] See proposed § 261.38(c)(1)(ii)(C)(*3*). We believe the implementation requirements (e.g., notifications, reports, testing) are integral to the substantive emission controls and are necessary for compliance assurance.

We acknowledge that this attempt to adopt the provisions of the OLD NESHAP to cover ECF tanks substantially complicates the conditions of the ECF exclusion. This is primarily because the OLD NESHAP does not address hazardous RCRA oxygenates that have significant vapor pressure, and the OLD NESHAP does not address ECF tanks that are currently subject to hazardous waste tank air emission controls that address hazards that remain after the ECF exclusion is claimed. In retrospect, stakeholders may conclude it is less problematic to simply comply with the controls provided for hazardous waste tanks under Subparts AA, BB, and CC of Part 264 or 265. We specifically request comment on: (1) Whether adopting provisions of the OLD NESHAP as conditions of the ECF exclusion is appropriate to address the hazards posed by fugitive air emissions from storage and handling of ECF; (2) whether adopting the OLD NESHAP provisions in the manner proposed is appropriate; and (3) whether it would be equally protective, but less problematic, to simply comply with the air emission controls for hazardous waste tanks in lieu of the adopted OLD NESHAP provisions. Any such comments must include an appropriate rationale and supporting information in order for the Agency to be able to consider it for final action.

2. Underground Storage Tank Systems

ECF storage tank systems that are subject to the requirements under 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks would not be subject to the proposed ECF storage tank conditions.[94] The Part 280 requirements are self-implementing and apply to hazardous substances listed in 40 CFR Part 302.4 which are not hazardous wastes. All of the hydrocarbons and oxygenates for which the comparable fuel specifications would be waived for ECF are included on this list of hazardous substances. Thus, the Part 280 requirements would apply to all ECF storage tank systems that meet the § 280.12 definition of underground storage tank. However, the Agency does request information on whether ECF is or would be stored in underground storage tanks or whether, because of the size of these tanks or other factors, ECF would only be stored in above ground storage tanks, tank cars and tank trucks. If so, the Agency solicits comment on a condition that would prohibit the storage of ECF in underground storage tanks.

3. Closure of Tank Systems

If an ECF tank system, tank car, or tank truck ceases to be operated to store ECF product, but has not been cleaned by removing all liquids and accumulated solids within 90 days of cessation of ECF storage operations, the tank system, tank car, and tank truck would become subject to the RCRA

[93] Note that we are not proposing to adopt § 63.2343, What Are My Requirements for Emission Sources Not Requiring Control? This section establishes notification, recordkeeping, and reporting requirements for emissions sources not currently subject to control under Subpart EEE. We do not believe those controls are necessary given that ECF burners and generators must comply with the conditions of the exclusion (and thus the adopted OLD provisions) when they first manage ECF in a tank, tank car, or tank truck.

[94] We request comment, however, on whether owners and operators of ECF tanks subject to the Part 280 requirements for underground storage tanks should also need to control fugitive air emissions as proposed as a condition of the ECF exclusion for storage in other tank systems. Similarly, we request comment on whether owners and operators of such tanks should also need to comply with the preparedness and prevention and emergency procedures provisions we propose as a condition of the ECF exclusion for storage in other tanks.

Subtitle C regulation.[95] [96] See proposed § 261.38(b)(13). This provision is modeled on § 261.4(c) which states:

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under parts 262 through 265, 268, 270, 271 and 124 of this chapter or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

Thus, like any other product storage unit which goes out of service, tank systems, tank cars or tank trucks that store or transport ECF would not be required to undergo closure according to the RCRA hazardous waste regulations (unless liquids or accumulated solids were not cleaned from the tank system within 90 days of cessation of operation as an ECF storage/transportation unit), when the unit ceases operation as a product storage/transportation unit. However, the Agency expects that the owner/operators will take common-sense steps to decontaminate and decommission the ECF storage unit if and when it goes out of service. We also encourage the owner/operators in these situations to consult with the regulatory authority as to the best way to ensure that the unit is cleaned properly.

Liquids and accumulated solids removed from a tank system, tank car, or tank truck that ceases to be operated for storage/transport of ECF product are solid wastes. They are hazardous waste if they exhibit a characteristic of hazardous waste or if the ECF were derived from a listed hazardous waste because the ECF is no longer meeting the conditions of the exclusion.

4. Waiver of RCRA Closure for RCRA Tanks That Become ECF Tanks

Interim status and permitted storage units, and generator accumulation units exempt from permit requirements under § 262.34 of this chapter, are currently subject to the closure requirements in 40 CFR Parts 264 and 265, including the requirement to close the unit within 90 days of receiving the final volume of hazardous waste (see 264.113(a) and 265.113(a)). However, we are proposing in this rulemaking not to subject these units to these closure requirements provided that the storage units have been used to store only hazardous waste that is subsequently excluded under the conditions of § 261.38, and that afterward will be used only to store fuel excluded under § 261.38. See proposed § 261.38(b)(14).[97]

This provision is intended to address situations where units such as tanks that have been used to store hazardous wastes, would be required under the existing regulations to go through RCRA closure before storage of the excluded material could commence. In the case of facilities that would be affected by today's proposed rule, this would mean that, for tanks that have been storing hazardous waste for which the generator claims an ECF exclusion, the owner/operator would need to remove all waste residues and other contamination from the tank system in order for the unit to then commence storing the identical material under the terms of the conditional exclusion for ECF. We believe that requiring closure under these circumstances would serve little, if any, environmental purpose, and so propose to explicitly provide in these situations that the storage tank system would not be subject to RCRA closure requirements. As discussed above, however, although an ECF tank system would not be required to undergo closure according to the RCRA hazardous waste regulations, the Agency expects that the owner/operators will take common-sense steps to decontaminate and decommission the tank system if and when it ultimately ceases to operate as an ECF storage tank system. We also note that tank cars/trucks need not meet the definition of an empty HW container before managing the same material as ECF (if that is the only material the container has managed).

5. Management of Incompatible Waste Fuels and Other Materials

In today's proposal, ECF generators would need to take precautions to prevent the mixing of ECF and other materials which could result in reactions which could: (1) Generate extreme heat or pressure, fire or explosions, or violent reactions; (2) produce uncontrolled hazardous mists, fumes, dusts, or gases; (3) produce uncontrolled flammable fumes or gases; or (4) damage the structural integrity of the storage unit or facility. See proposed § 261.38(c)(1)(iv). Appropriate documentation is also proposed to be kept by ECF generators to document how they will take precautions to avoid these situations. This documentation must be kept on-site for three years. Tanks, tank cars and tank trucks holding incompatible materials should be separated by means of a dike, berm, wall or other device.

B. What Other Options Did We Consider?

1. Other Options We Considered To Establish Storage Conditions for ECF

In evaluating possible storage controls for ECF, we considered two other options. One option would impose no specific new controls, but rather would rely on currently applicable controls for commercial products. The other option would apply full RCRA Subtitle C provisions until the ECF leaves the burner storage system—that is, the waste would remain hazardous until it was fed into the boiler.

In considering the first option, we determined that it would be difficult to assure the safe management of ECF because it is not clear what, if any, existing controls would apply to a hazardous waste that becomes an excluded product/fuel. There is a patchwork of Federal and State controls that apply to various products and fuels, but no one set of controls that we would be confident would apply across the board and ensure that ECF would be properly managed, particularly given that ECF can contain higher concentrations of particular hazardous, volatile hydrocarbons and oxygenates. We also believe it would complicate the implementation of this rule, and persons who handled ECF would not necessarily know what conditions must be followed to assure exclusion of the ECF. Consequently, we did not consider this option further.

The other option we considered, applying RCRA Subtitle C provisions until the ECF leaves the burner storage system, would in effect, move the point of exclusion to the ECF boiler. Storage and transportation of ECF would be subject to Subtitle C standards (which could include permits for burner storage units and for those generators that accumulate ECF for more than 90 days). We believe this option would be inappropriate because it would overregulate a material that has substantial fuel value and is inconsistent with the idea that ECF is an

[95] We are also proposing today to clarify that this provision currently applies to currently excluded comparable fuel.

[96] If the tank is used to actively accumulate hazardous waste after being taken out of service as an ECF (or comparable fuel) product tank, the tank may be eligible for the provisions under § 262.34 that waive the permit requirements for generator tanks that accumulate hazardous waste for not more than 90 days.

[97] This proposed provision mirrors the parallel provision for storage units managing zinc-bearing hazardous wastes where the wastes were subsequently excluded as zinc fertilizer. See § 261.4(a)(20)(v) and 67 FR at 48400 (July 24, 2002).

excluded product, rather than a waste material. See *Safe Food and Fertilizer*, 350 F. 3d at 1269 (exclusion based on comparability can extend back to encompass exclusion of the material when stored). We believe that our tailored management conditions adopted from the SPCC requirements, and engineered secondary containment, along with the conditions related to control of fugitive air emissions, are more appropriate for ECF because they reflect requirements to which analogous commercial products are subject.

2. Consideration of Storage Controls for Currently Excluded Comparable Fuels

As a separate issue, we considered whether to propose storage conditions for the currently excluded comparable fuel. The existing comparable fuel exclusion was promulgated in June 1998 and was not conditioned on meeting any particular storage controls. The comparable fuel exclusion was based on the principle that the excluded fuel would be comparable to fuel oil in concentration of hazardous constituents and physical properties that affect combustion, and thus can pose the same hazards as fuel oil during storage.

Comparable fuel does not meet the definition of oil, however, and so is not subject to the SPCC requirements applicable to fuel oil. See 40 CFR Part 112. Consequently, we considered whether to propose to apply the SPCC requirements to comparable fuel. We do not believe that applying the SPCC controls is warranted at this time because we are not aware of evidence of improper storage of these comparable fuels. Nonetheless, we request comment on whether there is evidence of improper storage of comparable fuel and whether the SPCC controls (or other storage controls) should be included as a condition for the existing comparable fuel exclusion.

V. How Would We Assure That the Conditions Are Being Satisfied?

A. What Recordkeeping, Notification and Certificate Conditions Would Apply to Generators and Burners?

We believe it is appropriate to propose that ECF generators and burners satisfy the same recordkeeping, notification and certification conditions that apply to existing comparable fuel generators and burners, as well as additional conditions that reflect that ECF is not physically identical to comparable fuels. In today's preamble, we provide a brief description of our rationale for proposing these provisions as part of the exclusion. However, persons should also refer to the proposed rule for comparable fuels (see 61 FR 17358) and the final rule (see 63 FR 33782) for further discussion.

1. Waste Analysis Plans

We are proposing the same waste analysis plan conditions for ECF as existing comparable fuel because ECF must also meet all of the specifications for comparable fuel, except the specifications for particular hydrocarbons and oxygenates. See existing § 261.38(c)(7) renumbered as proposed § 261.38(b)(4). These conditions require that generators develop a waste analysis plan prior to sampling and analysis of their ECF to determine if the waste fuel meets the exclusion specifications.

In addition, burners of ECF would need to address a number of the other conditions to ensure that the ECF is in compliance with the exclusion. Specifically, burners would need to ensure that the heating value of the fuel, as-fired, is 8,000 Btu/lb, as well as whether the concentration of benzene or acrolein exceeds two percent, the cutpoint for firing rate restrictions on the ECF. If the generator does not provide this information to the burner for each shipment of ECF, today's proposal would require the burner to develop and implement an ECF waste analysis plan to obtain the information. In addition, if a burner blends or treats ECF to achieve an as-fired heating value of 8,000 Btu/lb or greater or an as-fired concentration of benzene or acrolein of two percent or lower, we are proposing that the burner must analyze the fuel as received from the generator and again after blending or treatment to determine the heating value, benzene concentration, or acrolein concentration, as relevant. See proposed § 261.38(b)(5).

The generator (and burners required to develop a sampling and analysis plan) also must have documentation of the: (1) Sampling, analysis, and statistical analysis protocols that were employed; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste/fuel tested; and (4) results of the statistical analysis. More information on developing these elements of a waste/fuel analysis plan is found in the SW–846 guidance document. These are the same requirements that exist in the existing comparable fuels exclusion waste analysis plans.

2. Sampling and Analysis

As discussed above, we are proposing that ECF must meet all of the specifications for comparable fuel, except the specifications for particular hydrocarbons and oxygenates. Therefore, we are proposing the same conditions regarding sampling and analysis for ECF that are part of the existing comparable fuel exclusion, except the condition to determine the concentrations of particular hydrocarbons and oxygenates.[98]

The sampling and analysis provisions allow process knowledge to be used under certain circumstances to determine which constituents to test for in the initial scan and any follow up testing. Generators of ECF should have adequate knowledge of this hazardous secondary material to allow the use of process knowledge in determining which constituents may and may not be present in their waste. The use of process knowledge may only be used by the original generator of the hazardous waste. We are proposing that testing be required for all constituents, except the particular hydrocarbons and oxygenates for which the specifications do not apply, and those compounds that the initial generator determines are not present in the waste. We are also proposing that the following cannot be determined to ''not be present'' in the waste: (1) A hazardous constituent that causes it to exhibit the toxicity characteristic for the waste or hazardous constituents that were the basis for the waste code in 40 CFR 268.40; (2) a hazardous constituent detected in previous analysis of the waste; (3) a hazardous constituent introduced into the process that generates the waste; or (4) a hazardous constituent that is a byproduct or side reaction to the process that generates the waste. This condition is also in the existing comparable fuels exclusion.

Furthermore, we are proposing that the original generator has the responsibility to document their claim that specific hazardous constituents meet the exclusion specifications based on process knowledge. Regardless of which method a generator uses, testing or process knowledge, the generator is responsible for ensuring that the ECF meets all constituent specifications at all times. If at any time the ECF fails to meet any of the specifications, or other conditions contained in the proposed exclusion, any facility that treats (including burning in a boiler), stores or disposes of the ECF is in violation of Subtitle C hazardous waste requirements.

[98] Although the specifications for benzene and acrolein would not apply, the generator (or the burner) must determine the concentration of these compounds because we propose ECF firing rate restrictions for ECF containing more than two percent of either of these compounds.

3. Speculative Accumulation

We are proposing to adopt for ECF the same speculative accumulation provisions that apply to existing comparable fuel and to any recycled hazardous waste under § 261.2(c)(4). See proposed § 261.38(b)(7). Generators and burners must actually put a given volume of the fuel to its intended use during a one-year period, namely 75 percent of what is on hand at the beginning of each calendar year commencing on January 1. See also the definition of ''accumulated speculatively'' in § 261.1(c)(8). Prohibiting speculative accumulation is warranted because over-accumulation of hazardous waste-derived recyclables has led to severe hazardous waste damage incidents. See 50 FR at 658–61 and 634–37 (January 4, 1985). There is no formal recordkeeping requirement associated with the speculative accumulation provision, but the burden of proof is on the generator and burner to demonstrate that the material has not been speculatively accumulated.[99]

4. Notifications

We are proposing the same notification requirements for ECF generators that comparable fuel generators must comply. Also, ECF burners would be subject to the same notification conditions as comparable fuel burners, as well as additional notification conditions.

a. ECF Generator Notification. The person claiming that a hazardous waste meets the exclusion criteria for ECF would be the ECF generator. The ECF generator need not be the person who originally generates the hazardous waste, but can be the first person who documents and certifies that a specific hazardous waste meets the exclusion criteria.

Just as for comparable fuel generators, we are proposing that an ECF generator submit a one-time notification to regulatory officials (i.e., State RCRA and CAA officials). To be excluded, the generator must send a notification to the EPA Regional RCRA and CAA Directors in States without final RCRA program authorization, and to the State RCRA and CAA Directors in authorized States. Notification of the RCRA and CAA Directors will provide notification of the exclusion and appropriate documentation to both the RCRA and CAA implementing officials. The Agency's intent is for the notification to be sent to both the RCRA and CAA implementing officials because of the nature of this exclusion—a RCRA excluded waste being burned in the CAA regulated unit. Also, if the ECF is burned in a State other than the generating State, then we are proposing that the ECF generator also provide notification to that State's or Region's RCRA and CAA Directors.

Since this would be a self-implementing exclusion, in order to ensure delivery, we are proposing that the notification be sent by certified mail, or other mail service that provides written confirmation of delivery and until the notification of exclusion is received and the ECF generator is informed of such receipt, the waste is still a hazardous waste and must be managed as such. Only after the receipt of such notification by the regulatory officials would the hazardous waste be excluded, provided it was managed in accordance with the conditions proposed today for ECF. If an ECF loses the exclusion, the waste fuel is subject to regulation as a hazardous waste until it returns to compliance with the conditions and a new notification is provided by the generator or another subsequent handler.

Just as for the one-time generator notification in the existing comparable fuels exclusion, we are proposing that the notification contain the following information: (1) The name, address, and RCRA ID number of the person/facility claiming the exclusion; (2) the applicable EPA Hazardous Waste Codes for the ECF if it were not excluded from the definition of solid waste; (3) the name and address of the units, meeting the requirements of proposed § 261.38(c)(2), that will burn the ECF; and (4) the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

> Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all emission-comparable fuel/comparable fuel (specify which) identified in this notification. Copies of the records and information required at 40 CFR 261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. ECF Burner Notifications. We are proposing that the ECF Burner would provide the same public notification as required for existing comparable fuel burners, as well as a one-time, initial notification to the regulatory authority. For the public notification, the burner must submit for publication in a major newspaper of general circulation local to the site where the ECF will be burned, a notice entitled ''Notification of Burning of Emission Comparable Fuel Excluded Under the Resource Conservation and Recovery Act'' containing the following information: (1) Name, address, and RCRA ID number of the generating facility; (2) name of the unit(s) that will burn the ECF; (3) a brief, general description of the manufacturing, treatment, or other process generating the emission comparable fuel; (4) an estimate of the average and maximum monthly and annual quantity of ECF that will be used as a fuel in such units; and (5) name and mailing address of the State or Regional Directors to whom the notification is being submitted. This notification must be published in the newspaper prior to the use of the ECF, and is only necessary once for each material. In addition, to be excluded, we are also proposing that the ECF burner submit a one-time initial notification to regulatory officials (proposed § 261.38(c)(4)(i)). The one-time notification would require that the burner certify that the excluded fuel will be stored under the conditions required by this rule and that the burner will comply with the design, operating, notification, reporting and recordkeeping requirements of this rule. This initial notification would facilitate compliance assurance by alerting the regulatory authority that the burner is subject to substantive conditions of the exclusion and by ensuring that the burner is aware of those conditions.

5. Burner Certification

We are proposing the same burner certification for ECF burners as exist for comparable fuel with a few additional conditions. This burner certification is intended to protect the generator by having the ECF burner certify to the generator that he will comply with all applicable storage and burning conditions. Specifically, generators intending to ship the ECF off site for burning would obtain a one-time written, signed statement from the burner that includes the following: A certification that the burner will comply with the storage conditions, burner conditions, and the notification, reporting, recordkeeping and other conditions of the exclusion of ECF under 40 CFR 261.38; the name and address of the facility that will use the ECF as a fuel; and a certification that the state in which the burner is located is authorized to exclude wastes as

[99] Consult § 261.2(f) and 50 FR at 636–37 placing the burden for documenting conformance with conditions of an exclusion on the person claiming the exclusion in an enforcement action.

excluded fuels under (proposed) 40 CFR 261.38(a)(2). This condition coupled with the condition to notify the State or Regional Directors will enable regulatory officials to take any measure that may be appropriate to ensure that excluded fuel is burned in conformance with the applicable regulations and so does not become part of the waste management problem.

6. Recordkeeping

a. General. We are proposing the same recordkeeping conditions for ECF generators that currently apply to comparable fuel generators. In addition, we are proposing a condition that ECF burners keep any records pertaining to the sampling and analysis of the ECF.[100] The Agency believes that because of the self-implementing nature of this exclusion, maintenance of proper information on-site is essential to the proper implementation of the conditional exclusion.

More specifically, we are proposing that ECF generators maintain the following files (see proposed § 261.38 (b)(8)) at the facility generating the fuel: (1) All information required to be submitted to the State RCRA and CAA Directors as part of the notification of the claim of exclusion; (2) a brief description of any process used to convert the hazardous waste to ECF; (3) an estimate of the average and maximum monthly and annual quantities of each hazardous waste claimed to be excluded; (4) documentation for any claim that a constituent is not present in the hazardous waste pursuant to § 261.38(b)(8)(iv); (5) the results of all fuel analyses with quantitation limits; (6) documentation as required for the treatment or blending of a waste to meet the exclusion specifications[101]; (7) a certification from the burner if the excluded fuel is to be shipped off-site; and (8) the certification signed by the person claiming the exclusion or his authorized representative. The ECF generator would also maintain documentation of the waste analysis plan and the results of the sampling and analysis that includes the following: (1) The dates and times waste samples were obtained, and the dates the samples were analyzed; (2) the names and qualifications of the person(s) who obtained the samples; (3) a description of the temporal and spatial locations of the samples; (4) the name and address of the laboratory facility at which analyses of the samples were performed; (5) a description of the analytical methods used, including any clean-up and sample preparation methods; (6) all quantitation limits achieved and all other quality control results for the analysis, (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and a description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred; (7) all laboratory analytical results demonstrating that the exclusion specifications have been met for the ECF; and (8) all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.38(b)(9) and also provides for the availability of the documentation to the generator upon request. These records are to assist with compliance assurance with the required operating conditions. These records and those required for off-site shipments (discussed below) would have to be maintained for the period of three years. A generator (and ECF burner, as applicable) must maintain a current waste analysis plan during that three year period.

b. Off-Site Shipments. We are also proposing that, for each shipment of ECF a generator sends off-site for burning, a record of the shipment must be kept by the generator and by the burner. We note that a comparable fuel generator is currently subject to this condition, and the condition should apply to an ECF generator for the same reasons. The Agency believes that the generator keeping records of each shipment would help ensure that ECF is transported to the designated boiler. Therefore, we are proposing that ECF generators keep records of the following information for each off-site shipment, as currently required for comparable fuel generators: (1) The name and address of the facility receiving the ECF for burning; (2) the quantity of ECF delivered; (3) the date of shipment or delivery; (4) a cross-reference to the record of ECF analysis or other information used to make the determination that it meets the specifications; and (5) the one-time certification by the burner. These records are to facilitate tracking and to ensure that ECF is shipped to a designated burner.

In addition, we believe that an ECF burner should also keep a record of each shipment to assist with compliance assurance given that there are conditions on burning that relate to the heating value of the ECF and the concentration of benzene and acrolein. Accordingly, we are proposing that ECF burners keep records of the following information for each shipment received from an off-site generator: (1) The name, address, and RCRA ID number of the generator shipping the ECF; (2) the quantity of ECF delivered; and (3) the date of delivery.

Finally, we are proposing that ECF generators that ship ECF off-site must ship directly to the burner. ECF could not be handled by a broker or intermediate handler. This would help ensure that the ECF is received by the generator's designated burner and stored under the prescribed conditions prior to burning. This is important because ECF can pose greater hazard when stored than comparable fuel, and may not have emissions comparable to fossil fuel if not burned by the designated burner under the prescribed conditions. ECF must be burned under the specified burner conditions to ensure conformance with the basic principle of the exclusion—that emissions are comparable to those from burning fuel oil.

7. Transportation

We believe that the Department of Transportation (DOT) requirements, which govern the transportation of hazardous materials, will ensure the safe transportation of ECF. It should be noted that DOT requirements are self-implementing and ECF transporters are required to comply with all applicable requirements under the DOT regulations in 49 CFR parts 171 through 180.

8. Ineligible RCRA Hazardous Waste Codes

Consistent with the current comparable fuel exclusion, we are not proposing to restrict the ECF exclusion to particular waste codes, except that wastes listed for the presence of dioxins or furans would not be eligible for the ECF exclusion. See § 261.38(b)(11). However, we do not expect that corrosive or reactive wastes would be candidates for ECF because of the detrimental impacts on the burning unit that would occur.

[100] We are proposing that ECF burners who are required to sample and analyze ECF to determine the heating value of the ECF or the concentration of benzene or acrolein, if the generator has not provided that information for each shipment, must keep the same records as ECF generators regarding the sampling and analysis plan and the results of sampling and analysis.

[101] ECF can be blended in order to meet the viscosity specification. Records would have to be kept demonstrating that the ECF met all other specifications besides viscosity before blending. ECF can also be treated to meet the specifications. In that case, records would have to be kept that demonstrate bona fide treatment has occurred.

B. What If I Fail To Comply With Conditions of the Exclusion?

It is the responsibility of the generator claiming the exclusion to demonstrate eligibility.[102] More specifically, to be eligible for this exclusion, we are proposing that the person claiming the exclusion must meet the ECF specifications under proposed § 261.38(a)(2), as well as the other conditions of the exclusion: the provisions for achieving the specifications under proposed §§ 261.38(a)(4–7); the implementation requirements under proposed § 261.38(b), and the special requirements for managing ECF under proposed § 261.38(c).

After the exclusion for a waste has become effective, the conditions of the exclusion must continue to be met in order to maintain the exclusion.[103] If any person managing ECF fails to meet one or more of the proposed conditions of the exclusion under § 261.38, we are proposing that the ECF must be managed as a hazardous waste. Therefore, each person who manages ECF that loses its exclusion would have to manage it in accordance with the hazardous waste management requirements from the point when the material was first generated, regardless of whether the person is the one who actually causes the loss of the exclusion. EPA could choose to bring an enforcement action under RCRA section 3008(a) for all violations of RCRA subtitle C requirements occurring from the time the secondary material is generated through the time that it is ultimately disposed.

We request comment, however, on whether the final rule should include a ''reasonable efforts'' provision that would provide that the failure of an off-site, unaffiliated burner to meet the proposed conditions or restrictions of the exclusion would not mean the material was considered waste when handled by the generator, as long as the generator can adequately demonstrate that he has made reasonable efforts to ensure that the material will be managed by the burner under the conditions of the exclusion.[104] To achieve this benefit, the generator would have to exercise ''environmental due diligence'' in reviewing the operations of the burner in advance of transferring the hazardous secondary materials. We believe that a reasonable efforts provision might involve methods, such as audits (including site visits), that a number of generators of hazardous secondary materials now use to maintain their commitment to sound environmental stewardship, and to minimize their potential regulatory and liability exposures. These audits are frequently performed by third parties.

We also request comment on whether a reasonable efforts provision should include criteria that define reasonable efforts, and what those criteria should be. For example, a reasonable efforts provision could prescribe that the generator must evaluate by site visits, prior to the first shipment and every six months thereafter, the ECF storage and boiler design and operation at off-site unaffiliated facilities (e.g., an off-site facility that is not corporately affiliated with the generator) that they do business with.

In addition, we request comment on whether to require the generator to maintain records at the generating facility documenting the reasonable efforts made before transferring ECF to the burner. Such records would presumably include copies of audit reports, and/or other relevant information that was used as the basis for the generator's determination that the burner will manage the material under the conditions of the exclusion. Requiring specific documentation would help EPA or the authorized state to determine whether the generator did make reasonable efforts to ensure that his ECF was managed appropriately.

We also request comment on whether, as part of the documentation, the generator should also be required to maintain at the generating facility a certification statement, signed and dated by an authorized representative of the generator company, that for each burner to which the generator transferred ECF, that the generator made reasonable efforts to ensure that the ECF was properly managed. Such certification statement could, for example, be worded as follows: ''I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert burner name], reasonable efforts were made to ensure that the ECF will be managed under the conditions of the exclusion found at 40 CFR 261.38, and that such efforts were based on current and accurate information.''

Finally, we also solicit comment on whether the frequency of periodic updates of the ''reasonable efforts'' should be identified in the regulations, or whether that question should be left to individual situations applying an objectively reasonable belief standard. Information on industry standards for facility audits of off-site activities, including how frequently they are conducted, would be especially helpful.

Under the reasonable efforts provision, a generator who met his reasonable efforts obligations might ship his ECF to an unaffiliated burner where, due to circumstances beyond the generator's control, the burner failed to comply with the conditions of the exclusion. In such situations, and where the generator's decision to ship to that burner is based on an objectively reasonable evaluation that the burner would manage the ECF under the conditions of the exclusion consistent with this proposed rule, the generator would not have violated the terms of the exclusion.

C. How Would Spills and Leaks Be Managed?

ECF that is spilled or leaked, not cleaned up immediately and no longer meets the conditions of the exclusion is ''discarded.'' Thus, it is a solid waste. In addition, spilled or leaked ECF is a hazardous waste if it exhibits a characteristic of hazardous waste or if the ECF were derived from a listed hazardous waste.

Furthermore, the exclusion would not affect the obligation to promptly respond to and remediate any releases of ECF that may occur. Management of the released material not in compliance with applicable Federal and State hazardous waste requirements could result in an enforcement action. For example, a person who spilled or released ECF and failed to immediately clean it up could potentially be subject to enforcement for illegal disposal of the waste. See, for example, 40 CFR 264.1(g)(8). In addition, the release could potentially be addressed through enforcement orders, such as orders under RCRA sections 3013 and 7003.

D. What Would Be the Time-Line for Meeting the Proposed Conditions?

Because this is an optional and conditional exclusion, we are proposing that all conditions in § 261.38 must be

[102] Consult § 261.2(f) placing the burden for documenting conformance with conditions of an exclusion on the person claiming the exclusion in an enforcement action.

[103] Separate and distinct from any requirement or condition that would be established under this proposed rule, all generators of a solid waste—including ECF generators under this exclusion—have a continuing obligation to conduct proper hazardous waste determinations, including notifying the appropriate government official if they are generating a hazardous waste. 40 CFR 262.11.

[104] Although a proposed condition of the ECF exclusion would require the generator to obtain a certification from the burner that the ECF will be stored and burned under the conditions of the exclusion, a ''reasonable efforts'' provision would require the generator to take reasonable independent and proactive measures to ensure that the burner will manage ECF under the conditions of the exclusion.

met before ECF may be managed outside of the Subtitle C hazardous waste regulations.

VI. What Clarifications and Revisions Are Proposed for the Existing Conditions for Exclusion of Comparable Fuel?

We are proposing to clarify the consequences of failure to maintain compliance with the conditions of the exclusion for comparable fuel and the status of tanks that cease to be operated as comparable fuel storage tanks.[105] We are also proposing to waive the RCRA closure requirements for tank systems that are used only to store hazardous wastes that are subsequently excluded as a comparable fuel.

As discussed in Section V in the context of ECF and for the same reasons, comparable fuel that has lost its exclusion because of failure to comply with one or more conditions of the exclusion must be managed as hazardous waste from the point of generation. See proposed § 261.38(d). As examples, comparable fuel that is spilled or leaked and cannot be burned under the conditions of the exclusion (i.e., in a burner listed under proposed § 261.3(b)(3)(i)), and comparable fuel that is speculatively accumulated must be managed as hazardous waste.

In addition, consistent with the discussion in Section IV.A.3 in the context of ECF and for the same reasons, we propose to clarify that, if a comparable fuel tank system, tank car or tank truck ceases to be used to store comparable fuel product, but has not been cleaned by removing all liquids and accumulated sludge within 90 days of cessation of comparable fuel storage operations, that such systems would become subject to the RCRA Subtitle C regulation as a hazardous waste storage unit.

Finally, we are proposing today that interim status and permitted storage units, and generator accumulation units exempt from permitting under § 262.34, are not subject to the closure requirements of 40 CFR Parts 264 and 265 provided that the storage units have been used to store only hazardous waste that is subsequently excluded under the conditions of § 261.38, and that afterward will be used only to store fuel excluded under § 261.38. This is consistent with the proposed waiver of RCRA closure requirements for ECF, as discussed in Section IV.A.4, and is based on the same rationale. See proposed § 261.38(b)(14). However, as we noted in Section IV.A.4, the Agency expects that the owner/operator take common-sense steps to decontaminate and decommission the units and encourage them to consult with the regulatory authority as to the best way to ensure that the tank system is cleaned properly. See proposed § 261.38(b)(13).

[105] The proposed rule would also restructure the current requirements for comparable fuel (and syngas fuel) to make the regulatory language more readable given that the regulation must accommodate the proposed exclusion for ECF. We regard these language changes as purely technical, and thus, will accept comment only on whether the suggested language changes express the current meaning of the provision. We are not reexamining, reconsidering or otherwise reopening these provisions for comment.

VII. What Are the Responses to Major Comments of the Peer Review Panel?

In April 2007, EPA assembled two panels of expert scientists to review the significant scientific information used to support the proposed rule. One panel addressed questions regarding support for the comparable emissions rationale, and the other panel addressed questions regarding support for the procedure we used to rank the relative hazard of the 37 hydrocarbons and oxygenates for which specifications have been established in Table 1 to existing § 261.38.

Syracuse Research Corporation, under contract to USEPA, selected reviewers for both independence and scientific/technical expertise. Each panel member was selected for his/her recognized technical expertise that bears on the subject matter under discussion. The evaluation of real or perceived bias or conflict of interest is an important consideration and every effort was made to avoid conflicts of interest and significant biases.

The peer review reports, which contain the resumes of the peer reviewers, are available in the docket to the proposed rule (Docket ID No. EPA–HQ–RCRA–2005–0017):

- Syracuse Research Corporation, ''Rationale for Exclusion of Emission-Comparable Fuel,'' April 2007; and
- Syracuse Research Corporation, ''Application of WMPT to Rank Comparable Fuels Constituents,'' April 2007.

In this section of the preamble, we summarize the major comments by the peer reviewers and provide responses. We respond to other comments in separate documents available in the docket to the proposed rule:

- USEPA, ''Response to Peer Review Comments on the Rationale for Exclusion of Emission-Comparable Fuel,'' May 2007; and
- USEPA, ''Response to Peer Review Comments on the Application of WMPT to Rank Comparable Fuels Constituents, May 2007.

A. What Are the Reponses to Major Comments Regarding the Comparable Emissions Rationale?

Comment: One cannot conclude that ECF boilers would be controlled at least as stringently as hazardous waste boilers.

Response: We disagree. As we explain in Section II.A in Part Two above,[106] ECF boilers would be required to: (1) Continuously monitor carbon monoxide (CO) to ensure that levels remain below 100 ppmv; and (2) fire the ECF into the flame zone of the primary fossil fuel, which must comprise at least 50% of the boiler's fuel requirements. These two conditions ensure good combustion and a 99.99% destruction and removal efficiency (DRE) of the hazardous compounds (i.e., benzene, toluene, and the listed oxygenates). In addition, these conditions—CO below 100 ppmv and ensuring 99.99% DRE—are the principal controls applicable to hazardous waste combustors to control non-dioxin/furan organic HAP. The remaining proposed ECF boiler conditions (e.g., the boiler must be of a watertube, nonstoker design; primary fuel must have a minimum heating value of 8,000 Btu/lb; boiler load must be greater than 40%; the ECF must have low viscosity) help ensure the good combustion conditions typical of an oil-fired industrial boiler and are appropriate given that ECF would be burned under a conditional exclusion without a RCRA permit and without the regulatory oversight typical for a RCRA hazardous waste combustor.

The reviewer notes that hazardous waste boilers are subject to operating requirements in addition to CO monitoring to control emissions of non-dioxin/furan organic HAP. Thus, the reviewer questions whether ECF boilers would be controlled as stringently as hazardous waste boilers. Those additional operating requirements (e.g., minimum combustion chamber temperature; maximum waste feedrate), however, are designed to ensure that a hazardous waste boiler maintains 99.99% DRE. Operating limits on those parameters are established during the DRE emissions test. For ECF boilers, the

[106] We explain in that discussion, that, of the four combustion failure modes that EPA has identified—total ignition failure, partial ignition failure, combustion air failure, and rapid quench failure—only a total ignition failure could result in low CO and poor destruction of organic compounds in the feed and combustion by-products. Total ignition failure could potentially occur in a boiler if the fuel firing gun inadvertently directed the fuel to a location in the combustion chamber away from the flame zone—i.e., if the fuel were not fired into the flame zone. The other combustion failure modes (i.e., partial ignition failure; combustion air failure; and rapid quench failure) would result in high CO and potentially high unburned organics.

conditions to fire ECF directly into a stable, primary fuel flame zone and maintain a CO limit of 100 ppmv or less ensure 99.99% DRE. Thus, those additional operating requirements that are established for hazardous waste boilers during the DRE emissions test are not needed to ensure that 99.99% DRE is maintained for ECF boilers.

Comment: To evaluate whether ECF boiler emissions are likely to be substantially higher than oil-fired boiler emissions, the Agency inappropriately compared test condition average emissions for hazardous waste boilers (as a surrogate for ECF boiler emissions, given that ECF boilers would be controlled at least as stringently as hazardous waste boilers) to the 95th percentile of run emissions for oil-fired boilers. The reviewer noted that, to compare apples-to-apples, hazardous waste boiler test condition averages should be compared to oil-fired boiler test condition averages.

Response: In conducting our initial analysis, we had not compared hazardous waste boiler test condition averages to oil-fired boiler test condition averages because we have limited oil-fired boiler data (test conditions) for several of the compounds. Given the general paucity of emissions data and considering the large number of oil-fired industrial boilers, we used the oil-fired boiler runs, rather than test condition averages, to help represent the range of values that such boilers may emit.

Nonetheless, in retrospect, we agree with the reviewer. In fact, we have substantial oil emissions data representing many test conditions for several compounds, such as benzene, formaldehyde, naphthalene, and toluene. And, although we have limited data for several other compounds that comprise only one to three test conditions, we also have hazardous waste boiler data for several compounds that comprise only a few test conditions.

We have reanalyzed our data base to compare hazardous waste boiler emission test condition averages to the 95th percentile oil-fired boiler emission test condition averages. The results of that reanalysis support the proposed rule. See Section I.B.1 in Part Two above.

The 95th percentile test condition average benchmark levels for oil-fired boiler emissions are lower than the 95th percentile run benchmark levels, as expected. This results in additional hazardous waste boiler emissions exceeding the oil-fired boiler emissions benchmark.[107] However, these additional exceedances do not affect our view that ECF boiler emissions would be generally comparable to oil-fired boiler emissions (e.g., they are directly comparable or exceedances are not of consequence because they are *de minimis*).

Specifically, there is one additional exceedance each for benz(a)anthracene and fluorine, and two additional exceedances for ethylbenzene. All of these are *de minimis* exceedances, however, with emissions below 1 µg/dscm.

There is also one additional exceedance for benzene, but the exceedance is *de minimis* given that the revised oil-fired boiler benchmark is 90 µg/dscm and the additional hazardous waste boiler exceedance is at an emission level of 91 µg/dscm.

Finally, there are three additional exceedances for methylene chloride. The revised oil emissions benchmark is 40 µg/dscm, rather than the previous benchmark of 58 µg/dscm based on run data, but is based on only two test conditions. Thus, we believe it is not representative of the range of oil-fired boiler emissions. The three additional hazardous waste boiler emissions exceedances are at 54 µg/dscm, 52 µg/dscm, and 50 µg/dscm. Test reports for two of the three boilers indicate that methylene chloride contamination is known or suspected. The third test report is silent on the potential for contamination, but methylene chloride is commonly recognized as a sample and lab contaminant. Thus, we do not consider the remaining exceedance an indication that hazardous waste boiler emissions of methylene chloride are not comparable to oil emissions, considering also the limited oil emissions data and the *de minimis* potential (but not likely) increase in emissions.

Comment: Given that combustion is a percent destruction process, residual emissions of organic compounds in the feed will increase as feedrate increases. The Agency should ensure that burning fuels with high concentrations of hazardous hydrocarbons and oxygenates will, in fact, result in trace levels of emissions. An approach would be to project emission levels for the ECF compounds assuming 99.99% or possibly 99.999% DRE (since most DRE testing has shown this result) to determine if emissions are within the range of benchmark levels.

Response: It is reasonable to question whether emissions of unburned ECF compounds could exceed the benchmark levels given that the ECF compounds (i.e., benzene, toluene, and the listed oxygenates) could be fed at high feedrates. These hazardous compounds could be present in ECF at any concentration and ECF could represent a substantial portion of the fuel fired to the boiler—25 percent of the heat input for benzene and acrolein, and 50 percent of the heat input for the remaining compounds.[108]

We believe, however, that the hazardous waste boiler emissions data that we use as a surrogate for ECF emissions[109] are likely to include emissions that would result from burning ECF. It is reasonable to assume that some of the 26 hazardous waste watertube steam boilers in our data base are burning waste fuels that are destined to become ECF.[110] As we have explained above in Part Two, Section I.B.1, those emissions are comparable to oil emissions.

Nonetheless, we acknowledge that the ECF exclusion would allow benzene, toluene, and the listed oxygenates to be fed into industrial boilers at much higher rates than they may be actually fired in practice. For example, the maximum concentrations of many of these compounds in waste fuels that have been identified as candidate fuels for exclusion are relatively low: 0.05% for acrolein; 10% for methyl ethyl ketone; 15% for isobutyl alcohol and acetophenone; and 25% for benzene.[111] Toluene can be present at much higher concentrations, however, including levels up to nearly 100%. (As a practical matter, although the ECF exclusion would allow unlimited concentrations, the concentration of hazardous

[107] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Reanalysis of Comparison of Oil-Fired Boiler Emissions to Hazardous Waste Boiler Emissions Considering Test Condition Averages for Oil Emissions Data,'' dated April 25, 2007.

[108] This is a simplification. The actual condition would be that the firing rate of ECF containing benzene and acrolein above the specification levels in Table 1 to § 261.38 would be restricted to 25% of the total fuel input to the boiler on a heat or volume input basis, whichever results in a lower volume input of ECF, if the concentration of benzene or acrolein in the ECF exceeds 2 percent by mass. For the other compounds, the ECF firing rate would be restricted to 50% of the total fuel input to the boiler on a heat or volume input basis, whichever results in a lower volume input of ECF.

[109] Hazardous waste boiler emissions are a reasonable surrogate for ECF boiler emissions because organic emissions from ECF boilers would be controlled at least as stringently as emissions from hazardous waste boilers, as discussed above in response to Comment 1.

[110] This is a reasonable assumption because waste fuels that would qualify as ECF are premium fuels that a facility would want to burn, if possible, in an on-site boiler or in an affiliated facility's boiler, rather than contracting with a commercial hazardous waste combustor to burn the fuel.

[111] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Potential Approach to Establish Firing Rate Restrictions on Emission-Comparable Fuel,'' dated May 21, 2007, Table 2.

compounds will be limited to the levels actually found in waste fuels.) In addition, ECF would only represent a portion of the fuel fed to the boiler since at least 50% of the fuel must be fossil fuel. Finally, actual firing rates (and thus the feedrate of the compound of concern) will depend on a number of other factors, including the quantity of ECF generated by a facility that burns ECF on-site, and the quantity of ECF in the vicinity of facilities that burn ECF from off-site sources.

Notwithstanding current actual practice regarding the concentrations of compounds in ECF and ECF firing rates, it is reasonable to question whether the exclusion would allow such high feedrates of the compounds of concern that ECF emissions may not meet the criterion of being comparable to the emissions from burning oil. For example, if we assumed that a DRE of only 99.99% were achieved when feeding ECF with a 90% concentration of a compound of concern at the maximum firing rate (i.e., 25% for benzene and acrolein and 50% for the other compounds), the residual emissions of the compound would far exceed the emissions from burning oil.

Consequently, we request comment on an approach that would limit the feedrate of benzene, toluene, and the listed oxygenates to ensure that ECF emissions are comparable to the emissions from burning oil. Under the approach, we would identify a target emission level for each of these hazardous compounds, estimate a destruction and removal efficiency (DRE) for the compound, and calculate a maximum ECF firing rate as a function of the concentration of the compound in the ECF.

We would identify the target emission levels as:

- For each hazardous compound for which we have emissions data from oil-fired industrial boilers, the target level would be the highest test condition average (after screening out high apparent outliers) or a *de minimis* level, whichever is higher;
- For each hazardous compound for which we have only hazardous waste boiler emissions data, the target level would be the highest test condition average (after screening out high statistical outliers) [112] or a *de minimis* level, whichever is higher; and
- For each hazardous compound for which we have neither oil-fired boiler nor hazardous waste boiler emissions data, the target level would be a *de minimis* level.

The target emission levels for the three hazardous compounds for which we have oil emissions data—acrolein, benzene, and toluene—would range from a *de minimis* level of 20 µg/dscm [113] to 160 µg/dscm.[114] The target emission levels for the seven hazardous compounds [115] for which we have only hazardous waste boiler emissions data would range from a *de minimis* level of 20 µg/dscm to 130 µg/dscm. And, the target emission level for hazardous compounds for which we do not have emissions data would be a *de minimis* level of 20 µg/dscm.

We specifically request comment on whether these target emission levels are appropriate.

We believe it is reasonable to estimate a default DRE (i.e., DRE achievable at low compound feedrates) of 99.99% for the hazardous compounds that have a Thermal Stability [116] ranking of Class I or Class 2 (i.e., benzene, toluene, and methyl methacrylate) and a DRE of 99.995% for the other hazardous compounds. The Thermal Stability ranking is a principal tool for selecting difficult to destroy compounds for DRE testing required to establish operating requirements for hazardous waste combustors. We have DRE data for hazardous waste watertube boilers indicating that boilers may achieve DREs below 99.995% for Class I and Class 2 compounds when they are fed at low feedrates, while these boilers achieve greater than 99.995% DRE for Class 3–7 compounds that are fed at low feedrates.[117]

It is also reasonable to conclude that DRE increases with an increase in feedrate of the target compound. It is common knowledge that feedrates of POHCs must be high enough to avoid DRE failures attributable to stack method or analytical method imprecision and the baseline level of products of incomplete combustion.[118] A recent paper by Brukh, et al, lends support to this view.[119] Moreover, a plot of hazardous waste boiler DRE run data versus feedrate MTEC [120] indicates a general trend toward higher DREs as feedrates increase for those hazardous compounds for which we have DRE data over a range of feedrates.[121]

It appears that, when MTECs exceed 1.0E+07 µg/dscm, DRE exceeds 99.999% for all compounds. Additionally, it appears that, for MTECs in the range of 5.0E+06 to 1.0E+07, DRE exceeds 99.995% for all hazardous compounds. Consequently, it may be appropriate to consider this feedrate/DRE relationship to identify potential ECF firing rate limits.

We specifically request comment on our views regarding the relationship between DRE and compound feedrate.

We also have considered the potential concentrations of the hazardous compounds in ECF to calculate potential ECF firing rate limits

[112] See USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Appendix C.

[113] It is reasonable to consider 20 µg/dscm a *de minimis* emission level because it is comparable to approximately 0.01 ppmv propane equivalents for the high molecular weight compounds of concern, and is 3 orders of magnitude lower than the 10 ppmv total hydrocarbon emission limit the Agency has established for liquid fuel boilers that burn hazardous waste. See § 63.1217(a)(5)(ii).

[114] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Potential Approach to Establish Firing Rate Restrictions on Emission-Comparable Fuel,'' dated May 21, 2007, Table 1.

[115] We have hazardous waste boiler emissions data for: acetophenone, biz(2-ethylhexyl)phthalate, diethyl phthalate, di-n-butyl phthalate, di-n-octyl phthalate, methyl ethyl ketone, and phenol.

[116] The Thermal Stability ranking classifies (generally) hazardous compounds according to their gas-phase thermal stability under oxygen-starved conditions. Compounds are ranked according to the temperature required to destroy 99% of the compound in 2 seconds under oxygen-starved conditions. See USEPA, ''Guidance on Setting Permit Conditions and Reporting Trial Burn Results, Volume II of the Hazardous Waste Incineration Guidance Series,'' January 1989, Table D–1.

[117] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Potential Approach to Establish Firing Rate Restrictions on Emission-Comparable Fuel,'' dated May 21, 2007.

[118] See USEPA, Operational Parameters for Hazardous Waste Combustion Devices,'' October 1993. Section 4.3.2.1.

[119] See R. Brukh, R. Baret, and S. Mitra, New Jersey Institute of Technology, ''The Effect of Waste Concentration on Destruction Efficiency During Incineration,'' Environmental Engineering Science, Vol. 23, No. 2, 2006. The authors conducted experiments in a small, well-stirred reactor involving the combustion of methylene chloride (CH_2Cl_2) with ethylene (C_2H_4) as the primary fuel at residence times of 5–12 ms and temperatures of 1400–1750 K (2050–2700 °F). Experiments were done at both fuel rich and fuel lean conditions. CH_2Cl_2 concentrations were low (2–1350 ppm by volume in the main feed.). The authors modeled the combustion of methylene chloride, methyl chloride (CH_3Cl), and benzene. They show limited experimental data for CH_3Cl and C_6H_6 from previous work. The authors' hypothesis is that higher concentrations of POHC contribute additional radical fractions and the overall result is a higher destruction efficiency. This work would support higher DREs at higher feedrates if the results can be extrapolated to the higher POHC concentrations of concern and the higher residence times for hazardous waste combustors. This paper is available in the docket to this rulemaking: Docket ID No. EPA–HQ–RCRA–2005–0017.

[120] MTEC means maximum theoretical emission concentration (µg/dscm) and is an approach to normalize the feedrate for various size boilers. It is calculated as the mass feedrate divided by the stack gas flowrate.

[121] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Potential Approach to Establish Firing Rate Restrictions on Emission-Comparable Fuel,'' dated May 21, 2007, Figure 2.

considering the estimated DREs and target emission levels discussed above. As expected, at low concentrations in the ECF, the ECF firing rate would not be limited (i.e., other than the limits that would apply as a basic condition of the exclusion—25% maximum firing rate if the benzene or acrolein concentration exceeds 2%, and 50% maximum firing rate for all other ECF).[122]

We noted an anomalous situation for most hazardous compounds, however, where the firing rate limit first decreased as feedrate increased (as expected), but then at higher feedrates, the firing rate limit began to increase. This was caused by our assumption that DRE increases in a step-wise function rather than, as likely, in a smooth progression as feedrate increases. For example, we estimated DRE at 99.995% when the MTEC is 9.9E+06, and at 99.999% when the MTEC is 10E+06 (1.0E+07).

Clearly, this is not a realistic representation of how DRE relates to MTEC. To address this concern, we could, for example, consider whether it is appropriate to use a best-fit curve of the benzene data to develop a relationship between DRE and MTEC. Benzene may be an appropriate hazardous compound to select to define the relationship because it ranks the highest on the thermal stability index of the compounds for which we have DREs over a range of feedrates, it has the highest ranking for the hazardous compounds, and it is the third highest ranking compound in the Thermal Stability index, ranking higher than 341 other compounds.

We specifically request comment on whether feedrate limits for the hazardous compounds may be necessary to ensure that the target emission levels are not exceeded, and on the approach described above for potentially establishing ECF firing rate limits.

Comment: EPA should be sure that all coal-fired boilers have enough sulfur to inhibit dioxin/furan formation and thus justify a waiver from gas temperature control at the inlet to the electrostatic precipitator (ESP) or fabric filter (FF).

Response: Although data are limited, it appears that coal-fired boilers equipped with an ESP or FF and burning low sulfur coal will have low dioxin/furan emissions irrespective of the gas temperature at the inlet to the ESP or FF.

We have dioxin/furan data for 17 coal-fired boilers that are equipped with an ESP or FF.[123] One of the boilers burns hazardous waste and the remaining boilers do not burn hazardous waste. All dioxin/furan emissions are below 0.35 ng TEQ/dscm, which is below the 0.40 ng TEQ/dscm generic MACT dioxin/furan emission standard for hazardous waste combustors. See 40 CFR Part 63, Subpart EEE.

Nine sources operate the ESP or FF above a (estimated) gas temperature of 400 F, with a range of 401 °F to 500 °F. All of these boilers have dioxin/furan emissions below 0.2 ng TEQ/dscm. At least one of these boilers burns low sulfur coal.

Nonetheless, given the limited data, we specifically request comment and supporting information on the potential for dioxin/furan formation across the ESP or FF of a coal-fired boiler when the APCD is operated above 400 F, and thus whether a temperature limit is warranted as a condition of the ECF exclusion for those boilers burning coal as the primary fuel.

Comment: If ECF is fired in a separate firing system at a low firing rate, potentially high levels of CO from poor combustion of the ECF may be masked by the low CO from the primary fuel. In addition, the method of mixing the ECF with the other fuel is extremely important and should be considered when developing conditions that ensure good combustion. The location and design of the ECF injector will also be critical to ensuring good combustion. The ECF injector may meet the proposed conditions, but nonetheless not provide good combustion.

Response: The proposed conditions for firing ECF to ensure good combustion (e.g., atomization conditions; firing ECF into the flame zone of the primary, fossil fuel which must represent at least 50% of the fuel input to the boiler; the boiler must operate at >40% load to ensure a stable flame and well-mixed fuels) are at least as stringent as those required for hazardous waste boilers under 40 CFR 266.110, which ensure good combustion conditions. Moreover, if the ECF is injected in a manner that may not ensure good combustion, the 100 ppmv CO limit could not be achieved.

Nonetheless, we request comment on whether additional conditions on the ECF burner design, location, or operation may be warranted to ensure good combustion of ECF. Any such comments must include supporting information in order for the Agency to be able to consider it for final action.

Comment: The Agency has few oil-fired boiler emissions data to determine whether ECF boiler emissions (using hazardous waste boiler emissions as a surrogate) are likely to be comparable. Including additional sources in the data base could increase or decrease the benchmark emissions levels EPA used for the comparison.

Response: Our oil-fired emissions data base was developed under a comprehensive effort to obtain available emissions data to develop MACT standards (i.e., under CAA Section 112(d)) for industrial, commercial, and institutional boilers that do not burn hazardous waste. We have emissions data for 26 compounds for comparison with hazardous waste boiler emissions, comprised of more than 500 runs representing more than 235 test conditions. Nonetheless, we have few emissions data for some compounds, as the reviewer notes—data for only 1 or 2 test conditions that cannot represent the range of emissions from oil-fired boilers.

We note, however, that if more data were available, the emissions benchmark levels would generally increase rather than decrease as the range of emission levels is better represented. Counter-balancing this, however, is the fact that if we had additional hazardous waste boiler emissions data, some data would likely be higher than those that are currently in our data base.

Comment: Because most watertube steam boilers operate at less than 4% oxygen, requiring that CO be corrected to 7% oxygen will dilute actual CO levels. This dilution effect could cause operators to miss operational problems.

Response: We do not understand how correcting CO to 7% oxygen rather than 4% oxygen would affect the ability of operators to detect degradation in combustion conditions. Nonetheless, we specifically request comment and supporting information on whether CO should be corrected to 4% oxygen, which more closely reflects actual stack oxygen concentrations for these types of boilers. On a 4% oxygen correction basis, the 100 ppmv CO limit (at 7% oxygen) would be 120 ppmv.

Comment: A peer reviewer provides cites for two reports that may provide additional information on emissions from coal-fired power plants and one report that provides emissions estimates for volatile organic compounds emitted by the combustion of coal, gas, and oil:

- PCDD/PCDF Emissions from Coal Fired Power Plants, Riggs, Karen B. et al., Battelle, Columbus, OH, 15th International Symposium on

[122] See memorandum from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–RCRA–2005–0017, entitled ''Potential Approach to Establish Firing Rate Restrictions on Emission-Comparable Fuel,'' dated May 21, 2007, Table 3.

[123] USEPA, ''Response to Peer Review Comments on the Rationale for Exclusion of Emission-Comparable Fuel,'' May 2007, Section I, Comment 4.

Chlorinated Dioxins and Related Compounds, August 21–25, 1995, Edmonton, Canada, Volume 24, Pages 51–54.

• A Comprehensive Assessment of Toxic Emissions from Coal-Fired Power Plants, Phase 1 Results, from the U.S. Department of Energy Study. Prepared for Pittsburgh Energy Technology Center, U.S. Department of Energy. September 1996.

• The EPA National Air Quality and Emissions Trends Report, 2003 Special Study Edition, has Volatile Organic Compounds Emissions Estimates given in Table A–5 for coal, gas and oil. Later reports may be available.

Response: We appreciate the references and request comment on the significance and relevance of information in these reports on the proposed ECF exclusion. These documents are in the docket for this rulemaking: Docket ID No. EPA–HQ–RCRA–2005–0017.

B. What Are the Reponses to Major Comments Regarding the Application of the WMPT to Rank Comparable Fuel Constituents?

Comment: Because the 37 constituents are found in combustion (*i.e.* air) emissions, EPA should use air half-life data when generating Persistence scores for this effort, rather than half-life data from other media.

Response: We disagree. Information suggests that it's important to take into account the risks from indirect exposures (e.g. ingesting contaminated soil, food, or water) when considering the potential risk from combustor emissions. For example, Fradkin *et al.* (1988) [124] linked elevated levels of chemical pollutants in soils, lake sediments, and cow's milk to the atmospheric transport and deposition of pollutants from combustion sources.

The current effort is not a full quantitative risk assessment, but rather a screening-level ranking of chemicals based on potential chronic (i.e., long-term) risks to human health and the environment. As such, we consider it appropriate to make the protective assumption, as in the WMPT, of using the highest half-life data of the relevant media to derive Persistence scores for the 37 constituents.

Comment: When deriving a Persistence score for benzene, it would be more appropriate to use its half-life in air, rather than its half-life in sediment, as in the WMPT.

Response: For the reasons stated above, we consider it appropriate to use the highest half-life from all relevant environmental media. We also consider it appropriate to consistently apply the WMPT methodology across all 37 constituents whenever possible.

Interestingly, the peer reviewers did not agree on the implications of using the air half-life to derive benzene's Persistence score: One peer reviewer thought it would lower the Persistence score, while another peer reviewer saw it as grounds for a high Persistence score. Also, the three peer reviewers do not agree on the final disposition of benzene's ranking. One peer reviewer recommends moving benzene to Category C, another peer reviewer recommends leaving benzene in category B, while the third peer reviewer, due to benzene's toxicity, recommends elevating it to Category A.

Nevertheless, we recognize that as one peer reviewer puts it, ''* * * although the WMPT is a useful screening tool for evaluating the hazard of particular compounds, it should not be used blindly.'' We thus request public comment on this issue.

Comment: No toxicity data were available for five hazardous compounds (1,4 naphthoquinone, isosafrole, propargyl alcohol, safrole, dimethyl phthalate), and therefore complete scoring was not possible. Therefore, one of the peer reviewers thought that these compounds should have been removed from consideration as emission-comparable fuel constituents.

Response: While we recognize that no toxicity data were available for these five hazardous compounds, and therefore complete scoring was not possible, we do not agree that this should result in these compounds being removed from consideration as emission comparable fuel constituents. Specifically, there were sufficient data to derive the other two subscores (for Persistence and Bioaccumulation) required for final scores. Given their Persistence and Bioaccumulation scores, and assuming a worst-case toxicity score for each, none of the five hazardous compounds ranked higher than Category C. Therefore, we believe it appropriate to include them as emission-comparable fuel (ECF) constituents.

Comment: Little scientific justification is provided for grouping the PAHs and naphthalene into a common group.

Response: We made the policy decision to remain consistent with the pre-reviewed WMPT methodology, which classified constituents that scored 8 or 9 as high hazard. Naphthalene scored an 8, and thus is classified as a high hazard compound.

We also remained consistent with the WMPT methodology and the toxic release inventory (TRI) by grouping PAHs together, and classifying them as high hazard. Most PAHs scored an 8 or 9; benzo(a)anthracene and chrysene, however, scored 7.[125] In addition, we note that it is an EPA priority to reduce, whenever possible, the environmental release of any chemical found on EPA's list of Priority Chemicals. PAH's and naphthalene are members of EPA's list of priority chemicals. Consequently, we believe it is reasonable to classify PAHs and naphthalene as high hazard compounds.

We specifically request comment on adopting the WMPT (and TRI) policy of classifying PAHs as a group, and being consistent with the Agency's priority to reduce the environmental release of chemicals on EPA's list of priority chemicals. Any comment suggesting an alternative approach must include an appropriate rationale and supporting information in order for the Agency to be able to consider it for final action.

Comment: The Agency should consider the implications of the combustion process on the composition of potential emissions components in terms of the parent constituents, as well as the combustion by-products.

Response: This comment is not germane to the scope of this peer review. We discuss in Part Two, Sections I and II of the preamble why we believe that emissions from burning ECF under the proposed conditions would be comparable to emissions from burning oil in an industrial boiler operating under good combustion conditions.

Comment: The WMPT model uses many screening level values (e.g. ambient water quality criteria (AWQC)) that were developed for purposes other than that for which they are being used. Because the Agency used the data that were contained in the data base, there was little assessment of the quality of these data. The use of these values as ''numerical environmental benchmarks'' is inappropriate and will result in conservative estimates of risk.

Response: The ambient water quality criteria were not used to score any of the ECF constituents. Also, the WMPT methodology, including its hierarchy of data sources and data quality assurance procedures, went through peer and public review. Therefore, we disagree with the commenter that there was no

[124] Fradkin, L., R.J.. Bruins, C.H. Cleverly, 1988. ''Assessing the risk of incinerating municipal solid waste: The development and application of a methodology''. *Municipal Waste Combustion and Human Health*. CRC Press. Palm Beach, Florida.

[125] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.4.

quality control on the data in the data base. Moreover, commenting on the basic structure of the WMPT methodology, beyond its applicability to the current application, is beyond the scope of this peer review.

Comment: Very conservative assumptions are employed in the assessment process (e.g., the use of anaerobic sediment degradation half-lifes as a measure of the chemicals environmental persistence).

Response: We believe it is appropriate to make reasonably conservative assumptions considering that the ECF would be burned under a conditional exclusion absent a RCRA Part B permit and the regulatory oversight typical for a RCRA hazardous waste combustor.

Comment: When applying the model to any particular use or situation, consideration must be given to exposure potential and to the data used to estimate exposure potential.

Response: As we discuss in Part Two, Section III, of the preamble, our hazard ranking effort was not a full quantitative risk assessment, but rather a screening-level ranking of hazardous compounds based on potential chronic (i.e., long-term) risks to human health and the environment. As such, we consider it appropriate to apply the WMPT's use of a small number of relatively simple measures (i.e. combination of bioaccumulation and persistence factors) to represent the exposure potential of each chemical.

Comment: No scientific basis is provided for why ecological toxicity data were not considered in the evaluation process. The WMPT requires information on both human and ecological toxicity concerns. As implemented here, only human concerns were considered.

Response: In developing the WMPT, the Agency decided to collect the toxicity data in phases, beginning with human toxicity. In Phase 2, we would collect ecological toxicity data only for those constituents which a high toxicity score might elevate to a different category. However, as a result of the human toxicity data collected in Phase 1, we found that in no instance would a high ecological toxicity score alter a chemical's score sufficiently to elevate the chemical into a category for which we recommend action.

Therefore, we disagree with the opinion that only human toxicity concerns were considered. As detailed in the technical support document, [126] some, but not all, of the 37 constituents are found in the WMPT chemical data base. We retained the eco-toxicity data (and scores) for those chemicals already in the data base. For those chemicals not already in the WMPT data base, high eco-toxicity subscores would not have had a meaningful impact on the final scores.

Comment: The justification for acrolein's ''special characterization'' is unclear. Acrolein's inhalation toxicity and its proclivity to accumulate in body tissues (i.e. bioaccumulation score) are unrelated.

Response: We have clarified our explanation for assigning acrolein to hazard Category B—moderate relative hazard—to explain that our concern is that acrolein's human toxicity is based on the inhalation pathway and that acrolein has the highest possible WMPT score (three) for toxicity. See discussion in Part Two, Section III of the preamble.

Comment: There are several potential issues with the way different health and ecotoxicological endpoints are scored. The authors of the WMPT appear to have relied on expert judgment to select consistent levels of concern within a particular endpoint, but the background document says little about comparison or weighting of different endpoints.

Response: As mentioned above, while the Agency appreciates this comment, it is beyond the scope of this peer review.

Comment: A basic limitation of the WMPT approach is the exclusion from the rankings of any consideration of the dose likely to be involved in practical exposure situations.

Response: The WMPT ranking procedure is not a full quantitative risk assessment, but rather a screening-level ranking of hazardous compounds based on potential chronic (i.e., long-term) risks to human health and the environment. As such, we consider it appropriate to make reasonably conservative assumptions, as opposed to the consideration of the dose likely to be involved in practical exposure situations.

Comment: There is no explicit statement that the tables used in this application have been checked against the latest iterations of the various references.

Response: In the technical support document section titled ''Updating/Collecting Constituent-Specific Data,'' we explain that some, but not all the 37 comparable fuel constituents are found in the WMPT chemical data base.[127] For those constituents found in the data base, we updated the data and re-evaluated each chemical to determine if their WMPT scores changed with more up-to-date data.

Comment: The use of an inclusive category of ''Polycyclic Aromatic Compounds'' (PACs) with a single level of concern to deal with the evaluation of various carcinogenic polycyclic aromatic hydrocarbons and related compounds is appropriate for a screening tool and protective of public health, but there is some lack of clarity as to what compounds are included.

Response: All of the hydrocarbons listed in Table 1 to § 261.38, except benzene, naphthalene, and toluene, are PAHs.

Comment: Placing benzene in the second tier of concern (i.e., hazard Category B) is logical given the premise, with the following exceptions. This carcinogen is potentially present in ''exemptible'' fuels at a rather substantial level, thus offsetting its lower potency. Also, combustion of aromatics may under some circumstances lead to high concentrations of PAHs in the emissions. In addition, carcinogenesis is a severe endpoint and a subject of greater public concern than most other health outcomes. Benzene is one of the relatively few, and thus notorious, ''Known Human Carcinogens'' according to U.S. EPA and IARC. The level of concern (and thus, severity of restriction) should be considered at least equivalent to naphthalene, and thus benzene should be in hazard Category A.

Response: We have clarified our rationale for assigning benzene to hazard Category B. See discussion in Part Two, Section III, of the preamble.

Comment: The ranking of acrolein is appropriate, but it is odd that this material is variously described as a fuel constituent, rather than a combustion by-product.

Response: The scope of this peer review pertained to our hazard ranking procedure for the hydrocarbon and oxygenate constituents of ECF listed in Table 1 to § 261.38.

Comment: The use of measured and predicted data yield an inconsistent bioaccumulation ranking across PAHs. It would seem more appropriate to use the measured data to ensure a consistent assessment. Nevertheless, the proposed methodology is relatively robust and such refinements are not likely to impact the overall hazard ranking and resulting conclusions derived from the present analysis.

Response: The agency acknowledges the reviewer's comment. We consider it appropriate to consistently apply the

[126] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.4.

[127] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007, Section 2.4.

WMPT methodology across all 37 constituents.

Part Three: State Authority

I. Applicability of the Rule in Authorized States

EPA would strongly encourage states to adopt the regulations being proposed today. Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. When EPA authorizes a state to implement the RCRA hazardous waste program, EPA determines whether the state program is consistent with the federal program, and whether it is no less stringent. This process, codified in 40 CFR 271, ensures national consistency and minimum standards, while providing flexibility to states in implementing rules. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. In making this determination, EPA evaluates the state requirements to ensure they are no less stringent than the federal requirements.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. Authorized states may, but are not required to, adopt federal regulations that are considered less stringent than previous federal regulations. Because today's rule would eliminate specific requirements for materials that are currently managed as hazardous waste, state programs would no longer need to include those specific requirements in order to be consistent with EPA's regulations, when and if today's rule is finalized.

II. Effect on State Authorization

Today's notice proposes regulations that would not be promulgated under the authority of HSWA. Thus, the standards proposed today would be applicable on the effective date only in those States that do not have final RCRA authorization. Moreover, authorized States are required to modify their program only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's proposal is considered to be less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt regulations consistent with and equivalent to today's proposed standards, although EPA would encourage States to do so.

Some states incorporate the federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, EPA anticipates that the exclusions in today's proposal, when and if finalized, would be adopted by these states, consistent with state laws and state administrative procedures, unless they take explicit action as specified by their respective state laws to decline the proposed revisions.

Part Four: Costs and Benefits of the Proposed Rule

I. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of today's proposed action evaluates costs, cost savings (benefits), waste quantities affected, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we prepared a baseline characterization for ECF, developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts. Because EPA's data were limited, the estimated findings from these analyses should be viewed as national, not site-specific impacts.

II. Baseline Specification

Proper baseline specification is vital to the accurate assessment of incremental costs, benefits, and other economic impacts associated with a rule that would expand the exclusion for waste fuels. The baseline essentially describes the world absent any expanded exclusion. The incremental impacts of today's action are evaluated by predicting post-rule responses with respect to baseline conditions and actions. The baseline, as applied in this analysis, is assumed to be the point at which the proposal is published. A full discussion of baseline specification is presented in the Assessment [128] document completed for this action.

III. Analytical Methodology, Primary Data Sources, and Key Assumptions

We developed a simplified four-step approach for assessing the cost and economic impacts associated with this action. First, we identified all potentially eligible waste streams currently generated in the U.S. We next determined the tonnage of waste that is likely to qualify for the proposed exclusion. An economic threshold analysis was next applied to the likely eligible waste to determine which facilities could be expected to benefit from the exclusion. For example, for a generator with an eligible nonhazardous boiler on-site, the model assumes that the facility will use the exclusion if the total benefits (cost savings) realized by the generator are projected to exceed the total costs incurred to take advantage of the exclusion. Finally, we aggregated all facilities that are likely to use the exclusion to derive estimates for total

[128] Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Proposed Rule, June 2007.

costs, cost savings, and economic impacts (waste quantities affected).

The analytical model for this analysis derives both cost savings and costs associated with the exclusion. Cost savings include: Fuel cost savings (net of baseline fuel recovery), avoided hazardous waste management costs, transportation cost savings, tracking cost savings, and storage cost savings. These factors may be considered economic benefits of the proposed action. The model also assesses relevant costs of the exclusion. These are: Burner storage costs, boiler retrofit costs, waste stream analytical costs, raw materials replacement cost (related to waste that is recycled in the baseline), recordkeeping costs, and transport costs.

The net social benefits are calculated as the difference between the social benefits (cost savings) and social costs. The total net social benefits of the proposed rule are then calculated by aggregating the net social impacts associated with each facility expected to use the exclusion. Impacts to human health and the environment are assumed to be unchanged and are therefore not included in our monetized assessment.

The primary data sources used in this analysis are the 2003 Biennial Report (2003 BR) [129], the 1996 National Hazardous Waste Constituent Survey (NHWCS),[130] the 2002 National Emissions Inventory (NEI),[131] ACC Survey data,[132] and information provided in the engineering analysis developed by EERGC. The 2003 BR data were used to derive the potentially eligible waste streams currently generated in the U.S. This is the only national database available for this use that has been reviewed by the Agency to ensure data quality. The 1996 NHWCS reflects dated information, but was the only quality controlled data source available that provided the necessary waste constituent information on a nationwide basis, across all industries. The NEI data were used to make a determination of whether an eligible boiler is located at each facility. The EERGC engineering analysis provided all necessary engineering cost information.[133]

Data limitations have required us to apply several assumptions in our analysis. The most critical assumptions are:

- The ECF is assumed to be burned in nonhazardous waste boilers that meet the conditions of the exclusion.
- The ECF is assumed to have an average heating value of 12,200 Btu/lb. This is based on our assessment of the National Hazardous Waste Constituent Survey.
- That a facility that can use the exclusion, and has a nonhazardous waste boiler on-site that could burn ECF, would burn the fuel on-site rather than sending it off-site.
- The number of facilities purchasing ECF is assumed to equal the number of generating facilities expected to send their ECF off-site.
- That all ECF generated in a particular state would be shipped the same distance. Average shipment distances for each state are derived from hazardous waste shipped off-site, as reported in the 2003 BRS.

IV. Key Analytical Limitations

Our primary analytical limitations are associated with our estimate of the availability of on-site boilers, and our estimate of ECF qualifying for the exclusion. Nationwide data were not available to indicate whether each affected generating facility has a boiler on-site that can burn ECF. Using the National Emissions Inventory (NEI) data, we made a determination of whether an eligible boiler is located at each facility. This determination may misrepresent which boilers could burn ECF and which boilers could not. To estimate how much waste qualifies as ECF, we used the ACC survey data, and data derived from the NHWCS. The data presented in the NHWCS are the most comprehensive nationwide data available. However, these data are from 1993, and may not fully reflect the characteristics of today's waste streams.

V. Findings

This rule, as proposed, is projected to result in a benefit to society in the form of net cost savings to the private sector, on a nationwide basis, thereby allowing for the more efficient use of limited resources elsewhere in the market. This is accomplished without compromising protection of human health and the environment by ensuring comparable emissions from the burning of high Btu value waste.

The total net social benefits projected as a result of this rule, as proposed, are estimated at approximately $23 million per year. Avoided management and fuel costs represent the vast majority of all benefits (cost savings). Transportation, boiler retrofits, and analytical costs represent the majority of the costs. This estimate assumes all States adopt the rule, and incorporates all cost savings to affected generators, less all associated costs. Nearly 183,000 tons (U.S.) of waste are expected to initially qualify for the exclusion with approximately 107,000 tons/year actually excluded. Of this total, we estimate that approximately 34,000 tons are not currently burned for energy recovery.

We also analyzed various scenarios under the two primary regulatory options for the storage of ECF considered by the Agency. Annual net social benefits under the first option were found to be $603,000 to $1,396,000 greater than the net benefits of our proposed approach. The additional cost savings reflect reduced storage requirements. In addition, this scenario assumes that the specification for naphthalene and PAHs would not apply, which would increase the percentage of waste qualifying for the exclusion. Under the second option, annual net social benefits were found to range from $15 million to $20 million per year. These reduced savings largely reflect additional RCRA Subtitle C storage and tracking requirements. Furthermore, this option assumes that generating facilities would not send any of their ECF offsite. This assumption results in a significant reduction in annual fuel cost savings and avoided management costs.

We believe that it is important to not only understand the change in economic efficiency, as presented above, but to also understand the primary distributional effects associated with this change. Hazardous waste commercial incinerators and cement kilns are projected to experience negative distributional impacts associated with this action. These effects include revenue losses for both groups, plus fuel replacement costs for commercial kilns. Revenue losses to commercial incinerators are estimated at $3 million/year, while commercial kilns may experience combined revenue and fuel replacement losses of approximately $13.5 million per year. These impacts represent between one and 1.7 percent of the total estimated annual gross revenues for these sectors. Although impacts to these groups may be considered a cost in accounting

[129] U.S. EPA, 2003 National Biennial Report, database and supporting documentation available for download at *http://www.epa.gov/epaoswer/hazwaste/data/biennialreport/*.

[130] U.S. EPA, National Hazardous Waste Constituent Survey, database and supporting documentation available for download at *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/economic.html*.

[131] U.S. EPA, 2002 National Emissions Inventory, databases and supporting documentation available for download at *http://www.epa.gov/ttn/chief/net/2002inventory.html*.

[132] American Chemistry Council (ACC) voluntary membership survey of waste generation and management.

[133] USEPA, ''Draft Technical Support Document for Expansion of the Comparable Fuel Exclusion,'' May 2007.

terms, they do not represent a real resource cost of the proposed rule. The actual net benefits of this proposal reflect the impacts to these groups to the extent that there are real resource impacts, but do not include transfers from one facility to another.

The findings presented here reflect numerous analytical assumptions and limitations. Furthermore, we have analyzed additional scenarios and sensitivity analyses that are not presented in this Preamble. The reader is strongly encouraged to read the *Assessment* document prepared in support of this proposal to gain a full understanding of all findings, analytical assumptions, limitations, and how the adjustment of selected key parameters may influence the findings.

Part Five: Statutory and Executive Order Reviews

I. 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.'' This action may raise novel legal or policy issues [3(f)(4)] due to our determination of Emission-Comparable Fuel (ECF), as applied in this proposed rulemaking. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866. Any changes made in response to OMB recommendations have been documented in the docket for this action.

This rule, as proposed, is projected to result in benefits to society in the form of cost savings. The total net cost savings are estimated at $23 million per year. This figure is significantly below the $100 million threshold [134] established under part 3(f)(1) of the Order. Thus, this proposal is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment in support of today's proposal. This document is entitled: *Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Proposed Rule*, June 2007. The RCRA docket established for today's rulemaking maintains a copy of this *Assessment* for public review. Interested persons are encouraged to read and comment on this document.

[134] This $100 million threshold applies to both costs, and cost savings.

II. 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 1361.11.

Today's proposed rule is deregulatory. The respondents generating and burning excluded emission-comparable fuel would be subject to an annual public reporting and recordkeeping burden for the collection of information required under this proposed rule of 75,284 hours, and a cost of $4,071,341. However, because the excluded fuel would no longer be considered hazardous waste, the generator would not be required to comply with the paperwork, reporting, and recordkeeping requirements for hazardous wastes under RCRA. Therefore, the reporting and recordkeeping burden reduction associated with the reduced requirements for emission-comparable fuel would result in a net annual burden reduction of 21,206 hours and savings of $3,186,590 in capital and operation and maintenance costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; adjust 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.

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 the use of automated collection techniques, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–RCRA–2005–0017. 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 Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 15, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by July 16, 2007. The Agency will respond to any public comments on the information collection requirements contained in this proposal in the final rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* 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. This analysis must be completed unless the agency is able to certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, 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.

After considering the economic impacts of today's proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule

will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have determined that the affected ECF generators are not owned by small governmental jurisdictions or nonprofit organizations. Therefore, only small businesses were analyzed for small entity impacts. For the purposes of the impact analyses, small entity is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration.

This rule, as proposed, is projected to result in benefits in the form of cost savings to facilities that use the exclusion. As a result, the rule would not result in adverse impacts for any small businesses that generate ECF. The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this determination. This analysis is incorporated in the *Assessment* document, which is available in the docket to today's proposal. 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.

IV. Unfunded Mandates Reform Act of 1995

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. In addition, 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.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. This rule, as proposed, may be considered a voluntary program because the States are not required to adopt these requirements.

In any event, EPA has determined that this rule, as proposed, 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. The total net benefits (cost savings) of this action are estimated to be $23 million per year.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not affected by this action, as proposed.

V. 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. The proposed rule focuses on modified requirements for facilities generating ECF, without affecting the relationships between Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of state governments in developing it. Representatives from the States of North Carolina, Georgia, Missouri, Louisiana, and Oregon provided valuable input and review.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate hazardous waste generating facilities that generate ECF subject to this proposal. Thus, Executive Order 13175 does not apply to this proposed rule.

VII. EO 13045 ''Protection of Children From Environmental Health Risks and Safety Risks''

EO 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 EO 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.

VIII. Executive Order 13211: Actions Concerning Regulations 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 rule, as proposed, will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. Furthermore, this proposed rule is designed to improve economic efficiency by expanding the use of ECF.

IX. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposal is designed to allow for the use of waste as fuel under emission comparable standards, resulting in no increased risk to human health and the environment, when compared to the burning of fossil fuels.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 31, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by revising paragraph (a)(16) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(16) Comparable fuels, emission-comparable fuels, or comparable syngas fuels that meet the requirements of § 261.38.

* * * * *

3. Section 261.38 is revised to read as follows:

§ 261.38 Exclusion of comparable fuel, emission-comparable fuel, and syngas fuel.

(a) *Specifications for excluded fuels.* Wastes that meet the specifications for comparable fuel, emission-comparable fuel, or syngas fuel under paragraphs (a)(1), (a)(2), or (a)(3) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) *Comparable fuel specifications.*—(i) *Physical specifications.*—(A) *Heating value.* The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

(B) *Viscosity.* The viscosity must not exceed: 50 cs, as-fired.

(ii) *Constituent specifications.* For compounds listed in Table 1 to this section the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).

(2) *Emission-comparable fuel specifications*—(i) *Physical specifications.*—(A) *Heating value.* The heating value must exceed 5,000 BTU/lbs (11,500 J/g).

(B) *Viscosity.* The viscosity must not exceed 50 cSt, as-fired.

(ii) *Constituent specifications*—(A) Except as provided by paragraph (a)(2)(ii)(B) of this section, for compounds listed in Table 1 of this section the specification levels and, where nondetect is the specification, minimum required detection limits are: (see Table 1).

(B) *Waived specifications.* The specification levels in Table 1 to this section do not apply for the following hydrocarbons and oxygenates under the special conditions provided under this section for emission-comparable fuel:

(*1*) Benzene (CAS No. 71–43–2).

(*2*) Toluene (CAS No. 108–88–3).

(*3*) Acetophenone (CAS No. 98–86–2).

(*4*) Acrolein (CAS No. 107–02–8).

(*5*) Allyl alcohol (CAS No. 107–18–6).

(*6*) Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate] (CAS No. 117–81–7).

(*7*) Butyl benzyl phthalate (CAS No. 85–68–7).

(*8*) o-Cresol [2-Methyl phenol] (CAS No. 95–48–7).

(*9*) m-Cresol [3-Methyl phenol] (CAS No. 108–39–4).

(*10*) p-Cresol [4-Methyl phenol] (CAS No. 106–44–5).

(*11*) Di-n-butyl phthalate (CAS No. 84–74–2).

(*12*) Diethyl phthalate (CAS No. 84–66–2).

(*13*) 2,4-Dimethylphenol (CAS No. 105–67–9).

(*14*) Dimethyl phthalate (CAS No. 131–11–3).

(*15*) Di-n-octyl phthalate (CAS No. 117–84–0).

(*16*) Endothall (CAS No. 145–73–3).

(*17*) Ethyl methacrylate (CAS No. 97–63–2).

(*18*) 2-Ethoxyethanol [Ethylene glycol monoethyl ether] (CAS No. 110–80–5).

(*19*) Isobutyl alcohol (CAS No. 78–83–1).

(*20*) Isosafrole (CAS No. 120–58–1).

(*21*) Methyl ethyl ketone [2-Butanone] (CAS No. 78–93–3).

(*22*) Methyl methacrylate (CAS No. 80–62–6).

(*23*) 1,4-Naphthoquinone (CAS No. 130–15–4).

(*24*) Phenol (CAS No. 108–95–2).

(*25*) Propargyl alcohol [2-Propyn-1-ol] (CAS No. 107–19–7).

(*26*) Safrole (CAS No. 94–59–7); or

(3) *Synthesis gas fuel specifications.*—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(i) Have a minimum Btu value of 100 Btu/Scf;

(ii) Contain less than 1 ppmv of total halogen;

(iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(iv) Contain less than 200 ppmv of hydrogen sulfide; and

(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

(4) *Blending to meet the specifications for comparable fuel or emission-comparable fuel.* Hazardous waste shall not be blended to meet the specification under paragraphs (a)(1) or (a)(2) of this section, except as follows:

(i) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification for comparable fuel or emission-comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section for comparable fuel, and, for emission-comparable fuel, the specifications of paragraphs (a)(2)(i)(A) and (a)(2)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(C) Not violate the dilution prohibition of paragraph (a)(7) of this section.

(ii) *Blending emission-comparable fuel to meet the 8,000 Btu/lb, as-fired condition.* Emission-comparable fuel may be blended with other fuels to meet the 8,000 Btu/lb, as-fired, condition of paragraph (c)(2)(ii)(B) of this section.

(5) *Treatment to meet the comparable fuel or emission-comparable fuel specifications.* (i) A hazardous waste may be treated to meet the specifications of paragraphs (a)(1) or (a)(2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (a)(7) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(6) *Generation of a syngas fuel.* (i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(3) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(7) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(7) *Dilution prohibition for comparable fuel, emission-comparable fuel, and syngas fuel.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or (a)(2)(i)(A) and (a)(2)(ii) of this section for emission-comparable fuel, or (a)(3) of this section for syngas.

(b) *Implementation*—(1) *General.* (i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel, emission-comparable fuel, or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such wastes are called excluded fuel, and the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by compliance with the conditions of this section and keep records necessary to document compliance with those conditions.

(2) *Notices*—(i) *Notices to state RCRA and CAA Directors in authorized states or regional RCRA and CAA Directors in unauthorized states.* The generator must submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(A) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(C) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of waste for which an exclusion would be claimed; and

(E) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative:

> Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all emission-comparable fuel/comparable fuel (specify which) identified in this notification. Copies of the records and information required at 40 CFR 261.38 are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) *Public notice.* Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled ''Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act'' and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded waste to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for exclusion.

(3) *Burning*—(i) *Comparable fuel and syngas fuel.* The exclusion for fuels meeting the specifications under paragraphs (a)(1) or (a)(3) of this section applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable CAA MACT requirements:

(A) Industrial furnaces as defined in § 260.10 of this chapter;

(B) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(*1*) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(*2*) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(C) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.

(D) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(ii) *Emission-comparable fuel.* The exclusion for fuel meeting the specifications under paragraph (a)(2) of this section applies only if the fuel is burned under the conditions provided by paragraph (c) of this section.

(4) *Waste analysis plan for generators.* The generator of an excluded fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(7) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (b)(3)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) *Analysis plans for burners of emission-comparable fuel.* An emission-comparable fuel burner is subject to the waste analysis plan requirements under paragraph (b)(4) of this section to determine the heating value of the fuel and the benzene and acrolein concentration of the fuel if:

(i) The burner has not received information from the generator for each shipment documenting the heating value of the fuel and the concentration of benzene and acrolein;

(ii) The burner blends or otherwise treats emission-comparable fuel to achieve the 8,000 Btu/lb, as-fired criterion under paragraph (c)(2)(ii)(B) of this section; or

(iii) The burner blends or otherwise treats emission-comparable fuel to achieve a concentration of benzene or acrolein of two percent or less, as-fired, to avoid the emission-comparable fuel firing rate restrictions of paragraph (c)(2)(ii)(I) of this section.

(6) *Excluded fuel sampling and analysis*—(i) *General.* For each waste (and syngas) for which an exclusion is claimed under the specifications provided by paragraphs (a)(1), (a)(2), or (a)(3) of this section, the generator of the hazardous waste/syngas must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the waste/syngas, and, for emission-comparable fuel, except for the compounds listed in paragraph (a)(2)(ii)(B) of this section. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with an applicable specification should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste/syngas;

(C) Constituents introduced into the process that generates the waste/syngas; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste/syngas.

Note to paragraph (b)(6)(i): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste/syngas above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel

may not use process knowledge pursuant to paragraph (b)(6)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste/syngas. For the waste/syngas to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the waste analysis plan developed under paragraph (b)(4) of this section.

(vii) Excluded fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as generated.

(viii) If hazardous waste is blended to meet the kinematic viscosity specification, the generator shall:

(A) Analyze the waste as generated to ensure that it meets the constituent and heating value specifications, except that emission comparable fuel need not meet the 8,000 Btu/lb, as-fired heating value criterion of paragraph (a)(2)(i)(A) of this section; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all excluded fuel specifications.

(ix) Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(x) If an emission-comparable fuel burner has not received information from the generator for each shipment documenting the heating value of the fuel and the concentration of benzene and acrolein, the burner must sample and analyze the fuel to determine the heating value and the concentration of benzene and acrolein.

(xi) If a burner blends or treats emission-comparable fuel to achieve an as-fired heating value of 8,000 Btu/lb or greater or an as-fired concentration of benzene or acrolein of two percent or lower, the burner shall determine the heating value, benzene concentration, or acrolein concentration, as relevant, by analysis or information from the generator prior to blending and must analyze the fuel after blending or treatment to determine the heating value, benzene concentration, or acrolein concentration, as relevant.

(7) *Speculative accumulation.* Excluded fuel must not be accumulated speculatively, as defined in § 261.1(c)(8).

(8) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) The monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (b)(6) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(4) and (a)(5) of this section;

(vii) If the waste is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The waste analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) *Records retention.* Records must be maintained for a period of three years.

(10) *Burner certification*—(i) *Comparable fuel and syngas fuel.* Prior to submitting a notification to the State and Regional Directors, a generator of comparable fuel or syngas fuel excluded under paragraphs (a)(1) or (a)(3) of this section who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(A) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(B) Identifying the name and address of the facility that will burn the excluded fuel; and

(C) Certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(ii) *Emission-comparable fuel.* Prior to submitting a notification to the State and Regional Directors, a generator of emission-comparable fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(A) Certifying that the excluded fuel will be stored under the conditions of paragraph (c)(1) of this section and burned in a boiler under the conditions of paragraph (c)(2) of this section, and that the burner will comply with the notification, reporting, and recordkeeping conditions of paragraph (c)(4) of this section;

(B) Identifying the name and address of the facility that will burn the excluded fuel; and

(C) Certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) *Ineligible waste codes.* Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this part, are not

eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

(12) *Regulatory status of boiler residues.* Burning excluded fuel that was derived from a hazardous waste listed under §§ 261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous waste.

(13) *Residues in containers and tank systems upon cessation of operations.* (i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 268, 270, 271, and 124 of this chapter.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the emission-comparable fuel was derived from a hazardous waste listed under §§ 261.31 through 261.33 when the exclusion was claimed.

(14) *Waiver of RCRA Closure Requirements.* Interim status and permitted storage units, and generator storage units exempt from the permit requirements under § 262.34 of this chapter, are not subject to the closure requirements of 40 CFR Parts 264 and 265 provided that the storage units have been used to store only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to store fuel excluded under this section.

(15) *Spills and leaks.* Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if it was derived from a hazardous waste listed in §§ 261.31 through 261.33 when the exclusion was claimed.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) *Special conditions for emission-comparable fuel.* The following additional conditions apply to emission-comparable fuel—fuel that meets the specifications under paragraph (a)(2) of this section.

(1) *Storage*—(i) *General.* Emission-comparable fuel may be stored in a tank, tank car, or tank truck only.

(ii) *Applicability.* Emission-comparable fuel tank systems that are not subject to the hazardous substance underground storage tank requirements under § 280.42(b) of this chapter are subject to the conditions of this paragraph.

(iii) *Spill prevention, control, and countermeasures (SPCC) requirements.* Emission-comparable fuel tank systems with a capacity greater than 55 gallons and that are not subject to 40 CFR Part 280 (Standards for Underground Storage Tanks) are subject to the following SPCC requirements adopted from 40 CFR Part 112. You must comply with the adopted conditions by substituting the term ''emission-comparable fuel'' for the term ''oil,'' and by substituting the term ''release of emission-comparable fuel to the environment'' for the term ''discharge as described in § 112.1(b).''

(A) Section 112.2, Definitions. These definitions apply to the adopted SPCC requirements under paragraph (c)(1)(iii)(B) through (c)(1)(iii)(D) of this section.

(B) Sections 112.3(d) and 112.3(e) of this chapter, Requirement to Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan.

(*1*) You must prepare a Spill Prevention, Control, and Countermeasure Plan in writing, and in accordance with the adopted provisions of §§ 112.7 and 112.8 of this chapter;

(*2*) The SPCC Plan must be reviewed and certified according to the provisions of § 112.3(d) of this chapter and must be made available to the Regional Administrator according to the provisions of § 112.3(e) of this chapter;

(*3*) You must amend your SPCC Plan as directed by the Regional Administrator upon a finding that amendment is necessary to prevent and contain releases of emission-comparable fuel from your facility. You must implement the amended SPCC Plan as soon as possible, but not later than six months after you amend your SPCC Plan, unless the Regional Administrator specifies another date;

(C) Sections 112.5(a) and 112.5(b) of this chapter, Amendment of Spill Prevention, Control, and Countermeasures Plan by Owners or Operators.

(*1*) You must comply with the provisions of §§ 112.5(a) and 112.5(b) of this chapter by substituting the term ''release of emission-comparable fuel to the environment'' for the term ''discharge as described in § 112.1(b);''

(*2*) You must have a Professional Engineer certify any technical amendment to your Plan in accordance with § 112.3(d) of this chapter.

(D) Section 112.7 of this chapter, General Requirements for Spill Prevention, Control, and Countermeasure Plans.

(*1*) You must comply with the requirements of this section, except for paragraphs (a)(2), (c), (d), and (k) of this section.

(*2*) Your Plan may deviate from the requirements §§ 112.7(g), (h)(2), (h)(3) and (i), and the adopted provisions of § 112.8, where applicable to a specific facility, if you provide equivalent protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in §§ 112.7(g), (h)(2), (h)(3) and (i) and the adopted provisions of § 112.8 of this chapter, you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan.

(E) Section 112.8 of this chapter, Spill Prevention, Control, and Countermeasure Plan Requirements for Onshore Facilities, except for paragraph (b) of this section (facility drainage), paragraph (c)(2) of this section (secondary containment for bulk storage containers), and paragraph (c)(11) of this section (secondary containment for mobile containers). In addition, § 112.8(d)(1) of this chapter applies to all buried piping irrespective of the installation or replacement date.

(iv) *Containment and detection of releases*—To prevent the release of emission comparable fuel or hazardous constituents to the environment, you must provide secondary containment for emission-comparable fuel tank systems as prescribed by the following requirements adopted from § 264.193 of this chapter. You must comply with the adopted conditions by substituting the term ''emission-comparable fuel'' for the term ''waste,'' and by substituting the term ''document in the record'' for the term ''demonstrate to the Regional Administrator.''

(A) Section 264.193(b) of this chapter, which prescribes general performance standards for secondary containment systems;

(B) Section 264.193(c) of this chapter, which prescribes minimum requirements for secondary containment systems;

(C) Section 264.193(d)(1) through (3), which prescribe permissible secondary containment devices;

(D) Section 264.193(e) of this chapter, which prescribes design and operating requirements for the permissible secondary containment devices; and

(E) Section 264.193(f) of this chapter, which prescribes secondary containment requirements for ancillary equipment.

(v) *Preparedness and prevention, emergency procedures and response to releases*—(A) *Preparedness and prevention*—(*1*) *Required equipment.* Your facility must be equipped with the equipment required under § 264.32(a) through (d) of this chapter in a manner that it can be used in emergencies associated with storing and handling emission-comparable fuel.

(*2*) *Testing and maintenance of equipment.* You must test and maintain as necessary to assure proper operation in times of emergency all communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment required for your emission-comparable fuel tank system.

(*3*) *Access to communications or alarm system.* Whenever emission-comparable fuel is distributed into or out of the tank system, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee.

(*4*) *Arrangements with local authorities.* You must comply with § 264.37(a) of this chapter. If State or local authorities decline to enter into the arrangements prescribed by § 264.37(a) of this chapter, you must keep a record documenting the refusal.

(B) *Emergency procedures*—(*1*) *Emergency coordinator.* At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's Spill Prevention, Control, and Countermeasures (SPCC) Plan required under paragraph (c)(1)(iii) of this section, all emission-comparable fuel operations and activities at the facility, the location and characteristics of emission-comparable fuel handled, the location of all records within the facility pertaining to emission-comparable fuel, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the SPCC Plan.

(*2*) *Emergency procedures.* (*i*) Whenever there is an imminent or actual emergency situation relating to the emission-comparable fuel tank system, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately activate internal facility alarms or communication systems, where applicable, to notify all facility personnel and notify appropriate State or local agencies with designated response roles if their help is needed.

(*ii*) Whenever there is a release, fire, or explosion relating to the emission-comparable fuel tank system, the emergency coordinator must immediately identify the character, exact source, amount, and aerial extent of any released materials. He may do this by observation or review of facility records, and, if necessary, by chemical analysis.

(*iii*) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(*iv*) If the emergency coordinator determines that the facility has had a release, fire, or explosion associated with the emission-comparable fuel tank system which could threaten human health, or the environment outside the facility, he must report his findings as provided by paragraph (c)(1)(v)(B)(*2*)(*v*) of this section.

(*v*) If the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated, and he must immediately notify either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under part 1510 of this title) or the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include: the name and telephone number of the reporter; the name and address of the facility; the time and type of incident (e.g., release, fire); the name and quantity of material(s) involved, to the extent known; the extent of injuries, if any; and the possible hazards to human health, or the environment, outside the facility.

(*vi*) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other materials at the facility. These measures must include, where applicable, stopping processes and operations and collecting and containing released emission-comparable fuel.

(*vii*) If the emission-comparable fuel tank system stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(*viii*) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered emission-comparable fuel, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(*ix*) The emergency coordinator must ensure that, in the affected area(s) of the facility: materials that may be incompatible with the released emission-comparable fuel is treated, stored, or disposed of until cleanup procedures are completed; and all emergency equipment listed in the SPCC Plan is cleaned and fit for its intended use before operations are resumed.

(*x*) You must note in the record the time, date, and details of any incident that requires implementing the SPCC Plan for the emission-comparable fuel tank system. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. The report must include: the name, address, and telephone number of the owner or operator; the name, address, and telephone number of the facility; the date, time, and type of incident (e.g., fire, explosion); the name and quantity of material(s) involved; the extent of injuries, if any; an assessment of actual or potential hazards to human health or the environment, where this is applicable; and the estimated quantity and disposition of recovered material that resulted from the incident.

(C) *Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.* (*1*) You must comply with the provisions of § 264.196 of this chapter, except for §§ 264.196(e)(1) and (e)(4) of this chapter.

(*2*) To comply with the adopted provisions of § 264.196, you must

substitute the term ''emission-comparable fuel'' for the terms ''hazardous waste'' and ''waste;'' and the term ''record'' for the term ''operating record,'' and

(*3*) Unless you satisfy the requirements of §§ 264.196(e)(2) and (3) of this chapter, you must close the emission-comparable fuel tank system.

(vi) *Air emissions*—(A) *Applicability. (1)* If your emission-comparable fuel storage tank or transfer rack is not subject to the controls provided by § 63.2346 of this chapter, you must comply with the provisions of paragraphs (c)(1)(vi)(B) and (C) of this section:

(*2*) If your emission-comparable fuel storage tank is subject to the controls provided by § 63.2346 of this chapter other than those prescribed by item 6 in Table 2 to subpart EEEE, part 63 of this chapter (i.e., requirements for organic liquids with an annual average true vapor pressure of the total listed organic HAP >=76.6 kilopascals (11.1 psia)), you must determine whether the tank would be subject to the controls prescribed by item 6 after considering the vapor pressure of the RCRA oxygenates listed in paragraph (c)(1)(vi)(B)(*3*) of this section as well as the organic HAP listed in Table 1 to subpart EEEE, part 63 of this chapter. If the annual average true vapor pressure of the total RCRA oxygenates and Table 1 organic HAP in the emission-comparable fuel is >=76.6 kilopascals (11.1 psia), you are subject to the requirements of paragraphs (c)(1)(vi)(B) through (C) of this section.

(B) *Conditions of applicability.* When complying with the conditions under paragraph (c)(1)(vi)(C) of this section, you must:

(*1*) Comply with the conditions irrespective of whether your facility is an area source as defined by § 63.2 of this chapter.

(*2*) Comply with the conditions by substituting the term ''RCRA oxygenates as well as organic HAP'' for each occurrence of the term ''organic HAP;'' the term ''RCRA oxygenates as well as organic HAP listed in Table 1'' for each occurrence of the term ''organic HAP listed in Table 1;'' and the term ''RCRA oxygenates as well as Table 1 organic HAP'' for each occurrence of the term ''Table 1 organic HAP.''

(*3*) Comply with the conditions using the following definition of RCRA oxygenates: The term ''RCRA oxygenates'' means the following organic compounds:

(*i*) Allyl alcohol (CAS No. 107–18–6);

(*ii*) Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate] (CAS No. 117–81–7);

(*iii*) 2,4-Dimethylphenol (CAS No. 105–67–9);

(*iv*) Ethyl methacrylate (CAS No. 97–63–2);

(*v*) 2-Ethoxyethanol [Ethylene glycol monoethyl ether] (CAS No. 110–80–5);

(*vi*) Isobutyl alcohol (CAS No. 78–83–1);

(*vii*) Isosafrole (CAS No. 120–58–1);

(*viii*) Methyl ethyl ketone [2-Butanone] (CAS No. 78–93–3);

(*ix*) 1,4-Naphthoquinone (CAS No. 130–15–4);

(*x*) Propargyl alcohol [2-Propyn-1-ol] (CAS No. 107–19–7); and

(*xi*) Safrole (CAS No. 94–59–7).

(*4*) Comply with the conditions using the following definition of organic liquid. Organic liquid means emission comparable fuel that:

(*i*) Contains 5 percent by weight or greater of the RCRA oxygenates as well as organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c) of this chapter; and

(*ii*) Has an annual average true vapor pressure of 0.7 kilopascals (0.1 psia) or greater.

(*5*) Comply with the conditions using the following definition of affected source. Affected source means the collection of activities and equipment used to distribute emission-comparable fuel into, out of, or within a facility.

(*6*) Comply with the conditions by substituting the term ''subject to § 261.38(c)(1)(vi)(C)of this chapter'' for the term ''subject to this subpart.''

(*7*) Comply with the storage tank controls in Table 2 to subpart EEEE, part 63 of this chapter as follows:

(*i*) If your tank has a capacity less than 18.9 cubic meters (5,000 gallons) and the annual average true vapor pressure of the total RCRA oxygenates and Table 1 organic HAP in the stored organic liquid is >=76.6 kilopascals (11.1 psia), you must comply with the requirements under item 1 of Table 2 to subpart EEEE, part 63 of this chapter, for existing sources or item 3 of that table for reconstructed or new sources; and

(*ii*) If your existing source tank has a capacity identified in item 1 of Table 2 to subpart EEEE, part 63 of this chapter, you must comply with the requirements of item 1.a.i or 1.a.ii of that table if the annual average true vapor pressure of the total RCRA oxygenates and Table 1 organic HAP in the stored organic liquid is >=5.2 kilopascals (0.75 psia) and <76.6 kilopascals (11.1 psia);

(*8*) Comply with the conditions if:

(*i*) Your tank or transfer rack is exempt from subpart EEEE, part 63 of this chapter, under the provisions of § 63.228(c)(1) of this chapter, which exempts tanks at facilities subject to a NESHAP other than subpart EEEE, part 63; and

(*ii*) The requirements applicable to the tank or transfer rank under the other NESHAP are not equivalent to, at a minimum, the conditions under paragraph (c)(1)(vi)(C) of this section. You must document and record your determination whether the requirements under the other NESHAP are less stringent than the conditions under paragraph (c)(1)(vi)(C) of this section. You may contact the RCRA regulatory authority to assist with this determination.

(*9*) Submit all notifications, reports, and other communications to the RCRA regulatory authority rather than the CAA regulatory authority.

(C) *Conditions to control air emissions.* (*1*) The affected source is the equipment identified under § 63.2338(b)(1) through (5) of this chapter, except for equipment identified in § 63.2338(c)(2) through (3) of this chapter.

(*2*) Definitions of new, reconstructed, and existing affected sources are provided under § 63.2338(d) through (f) of this chapter.

(*3*) You must comply with the emission limitations, operating limits, and work practice standards under § 63.2346 of this chapter.

(*4*) You must comply with the general requirements under § 63.2350 of this chapter. The startup, shutdown, and malfunction plan required by § 63.2350(c) of this chapter need not address equipment not subject to paragraph (c)(1)(vi)(C) of this section.

(*5*) You must comply with the performance tests, design evaluation, and performance evaluations requirements under § 63.2354 of this chapter. When complying with § 63.2354(c) of this chapter, however, you must determine the content of RCRA oxygenates as well as organic HAP in the emission-comparable fuel.

(*6*) You must conduct performance tests and other initial compliance demonstrations by the dates specified in § 63.2358 of this chapter.

(*7*) You must conduct subsequent performance tests by the dates specified in § 63.2362 of this chapter.

(*8*) You must comply with the monitoring, installation, operation, and maintenance requirements under § 63.2366 of this chapter.

(*9*) You must demonstrate initial compliance with the emission limitations, operating limits, and work practice standards as required under § 63.2370 of this chapter.

(*10*) You must monitor and collect data to demonstrate continuous

compliance and use the collected data as required by § 63.2374 of this chapter.

(*11*) You must demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards as required by § 63.2378 of this chapter.

(*12*) You must submit the notifications and on the schedule required by § 63.2382 of this chapter. Notifications must be submitted to the RCRA regulatory authority.

(*13*) You must submit the reports and on the schedule required by § 63.2386 of this chapter. Reports must be submitted to the RCRA regulatory authority.

(*14*) You must keep the records required by § 63.2390 of this chapter.

(*15*) You must keep records in the form, and for the duration, required by § 63.2394 of this chapter.

(*16*) The parts of the General Provisions that apply to you are provided by § 63.2398 of this chapter.

(*17*) The definitions that apply to the conditions under paragraph (c)(1)(vi)(C) of this section are provided by § 63.2406 of this chapter, and paragraphs (c)(1)(vi)(B)(3) through (5) of this section.

(*18*) You are subject to the requirements in Tables 1–12 to subpart EEEE, part 63 of this chapter.

(vii) *Underground storage tank systems.* Underground storage tank systems are subject to the applicable requirements under 40 CFR Part 280.

(viii) *Management of incompatible waste fuels and other materials.* (A) The generator must document in the waste analysis plan under paragraph (b)(4) of this section how (e.g., using trial tests, analytical results, scientific literature, or process knowledge) precautions will be taken to prevent mixing of waste fuels and other materials which could result in reactions which:

(*1*) Generate extreme heat or pressure, fire or explosions, or violent reactions;

(*2*) Produce uncontrolled toxic mists, fumes, dusts, or gases;

(*3*) Produce uncontrolled flammable fumes or gases; or

(*4*) Damage the structural integrity of the storage unit or facility.

(B) Incompatible materials must not be placed in the same tank.

(2) *Burning*—(i) *General.* Emission-comparable fuel must be burned in an industrial or utility boiler as defined in paragraph (b)(3) of this section but that is further restricted by being a watertube type steam boiler that does not feed fuel using a stoker or stoker-type mechanism.

(ii) *Operating conditions*—(A) *Fossil fuel as primary fuel.* A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, or tall oil. Such fuels are termed ''primary fuel'' for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or volume input basis, whichever results in the greater volume feedrate of primary fuel fired;

(B) *Fuel heating value.* Primary fuels and emission-comparable fuel shall have a minimum as-fired heating value of 8,000 Btu/lb, and each material fired in a firing nozzle where hazardous waste is fired must have a heating value of at least 8,000 Btu/lb, as-fired;

(C) *CO CEMS.* When burning emission-comparable fuel, carbon monoxide emissions must not exceed 100 parts per million by volume, over an hourly rolling average (monitored with a continuous emissions monitoring system (CEMS)), dry basis and corrected to 7 percent oxygen. You must use an oxygen CEMS to continuously correct the carbon monoxide level to 7 percent oxygen. You must install, calibrate, maintain, and continuously operate the CEMS in compliance with the quality assurance procedures provided in the appendix to subpart EEE of part 63 of this chapter (Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors) and Performance Specification 4B (carbon monoxide and oxygen) in appendix B, part 60 of this chapter.

(D) *Dioxin/furan control.* (*1*) If the boiler is equipped with a dry particulate matter control device and the primary fuel is not coal, you must monitor the combustion gas temperature at the inlet to the dry particulate matter control device, and the gas temperature must not exceed 400 °F on an hourly rolling average.

(2) *Calibration of thermocouples.* The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequently than once per year.

(E) *Calculation of rolling averages*—(*1*) *Calculation of rolling averages upon intermittent operations.* You must ignore periods of time when one-minute values are not available for calculating the hourly rolling average. When one-minute values become available again, the first one-minute value is added to the previous 59 values to calculate the hourly rolling average.

(*2*) *Calculation of rolling averages when the emission-comparable fuel feed is cutoff.* You must continue monitoring carbon monoxide and combustion gas temperature at the inlet to the dry particulate matter emission control device when the emission-comparable fuel feed is cutoff, but the source continues operating on other fuels. You must not resume feeding emission-comparable fuel if the emission levels exceed the limits provided in paragraphs (c)(2)(ii)(C) and (D) of this section.

(F) *Automatic fuel cutoff system*—(*1*) *General.* You must operate the boiler with a functioning system that immediately and automatically cuts off the emission-comparable fuel feed, except as provided by paragraph (c)(2)(ii)(F)(*7*) of this section:

(*i*) When the hourly rolling average carbon monoxide level exceeds 100 ppmv or the combustion gas temperature at the inlet to the initial dry particulate matter control device exceeds 400 °F on an hourly rolling average.

(*ii*) When the span value of the combustion gas temperature detector is exceeded;

(*iii*) Upon malfunction of the carbon monoxide CEMS or the gas temperature detector; or

(*iv*) When any component of the automatic waste feed cutoff system fails.

(*2*) *Failure of the automatic fuel cutoff system.* If the automatic emission-comparable fuel cutoff system fails to automatically and immediately cut off the flow of emission-comparable fuel upon exceedance of the carbon monoxide or gas temperature limits, you have failed to comply with the emission-comparable fuel cutoff requirements of this section. If an equipment failure prevents immediate and automatic cutoff of the emission-comparable fuel feed, however, you must cease feeding emission-comparable fuel as quickly as possible.

(*3*) *Corrective measures.* If, after any automatic emission-comparable fuel feed cutoff, the carbon monoxide or gas temperature limit was exceeded while emission-comparable fuel remained in the combustion chamber, you must investigate the cause of the automatic emission-comparable fuel feed cutoff, take appropriate corrective measures to minimize future automatic cutoffs, and record the findings and corrective measures in the operating record.

(*4*) *Excessive exceedance reporting.* (*i*) For each set of 10 exceedances of the carbon monoxide emission limit or the limit on the gas temperature at the inlet to the dry particulate matter control device while emission-comparable fuel remains in the combustion chamber (i.e., when the emission-comparable fuel residence time has not transpired since the emission-comparable fuel feed was cut off) during a 60-day block period, you must submit to the Administrator a

written report within 5 calendar days of the 10th exceedance documenting the exceedances and results of the investigation and corrective measures taken.

(*ii*) On a case-by-case basis, the Administrator may require excessive exceedance reporting when fewer than 10 exceedances occur during a 60-day block period.

(5) *Testing.* The automatic emission-comparable fuel feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless you document in the operating record that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, you must conduct operability testing at least monthly. You must document and record in the operating record automatic emission-comparable fuel feed cutoff system operability test procedures and results.

(*6*) *Ramping down emission-comparable fuel feed.* You may ramp down the emission-comparable fuel feedrate over a period not to exceed one minute. If you elect to ramp down the emission-comparable fuel feed, you must document ramp down procedures in the operating record. The procedures must specify that the ramp down begins immediately upon initiation of automatic emission-comparable fuel feed cutoff and the procedures must prescribe a bona fide ramping down. If the limit on carbon monoxide emissions or gas temperature at the inlet to the dry particulate matter control device is exceeded during the ramp down, you have failed to comply with those limits.

(G) *Boiler load.* Boiler load shall not be less than 40 percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input.

(H) *Fuel atomization.* The emission-comparable fuel shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:

(*1*) *Particle size.* The emission-comparable fuel must pass through a 200 mesh (74 micron) screen, or equivalent;

(*2*) *Mechanical atomization systems.* Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;

(*3*) *Rotary cup atomization systems.* Fuel flow rate through a rotary cup atomization system must be maintained within the design range taking into account the viscosity and volatility of the fuel.

(I) *Restrictions on benzene and acrolein.* If the as-fired concentration of benzene or acrolein in the emission-comparable fuel exceeds 2 percent by mass, the firing rate of emission-comparable fuel cannot exceed 25% of the total fuel input to the boiler on a heat or volume input basis, whichever results in a lower volume input of emission-comparable fuel.

(3) *Intermediate handlers.* ECF may not be managed by any entity other than the generator, transporter, and designated burner.

(4) *EPA Identification Number.* A burner that receives emission-comparable fuel from an offsite generator must obtain an EPA identification number from the Administrator. A burner who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700–12. Upon receiving the request, the Administrator will assign an EPA identification number to the burner.

(5) *Notification, reporting, and recordkeeping*—(i) *Initial Notification.* A burner that receives emission-comparable fuel from an offsite generator must submit an initial notification to the Regional or State RCRA and CAA Directors prior to receiving the first shipment:

(A) Providing the name, address, and EPA identification number of the burner

(B) Certifying that the excluded fuel will be stored under the conditions of paragraph (c)(1) of this section and burned in a boiler under the conditions of paragraph (c)(2) of this section, and that the burner will comply with the notification, reporting, and recordkeeping conditions of paragraph (c)(3) of this section;

(C) Identifying the specific units that will burn the excluded fuel; and

(D) Certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(ii) *Reporting.* The burner must submit to the Administrator excessive CO exceedance reports required under paragraph (c)(2)(ii)(F)(*5*) of this section.

(iii) *Recordkeeping*—(A) *Records of shipments.* If the burner receives a shipment of emission-comparable fuel from an offsite generator, the burner must retain for each shipment the following information on-site:

(*1*) The name, address, and RCRA ID number of the generator shipping the excluded fuel;

(*2*) The quantity of excluded fuel delivered; and

(*3*) The date of delivery;

(B) *Boiler operating data.* The burner must retain records of information required to comply with the operating requirements of paragraph (c)(2) of this section.

(C) *Records retention.* The burner must retain records at the facility for three years.

(d) *Failure to comply with the conditions of the exclusion.* An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized state agency may take enforcement action under RCRA section 3008(a).

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 Btu/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	4900	.....
Total Halogens as Cl	NA	540	.....
Total Organic Halogens as Cl	NA	([1])	
Polychlorinated biphenyls, total [Aroclors, total]	1336–36–3	ND	1.4
Cyanide, total	57–12–5	ND	1
Metals:			
Antimony, total	7440–36–0	12	.....
Arsenic, total	7440–38–2	0.23	.....
Barium, total	7440–39–3	23	.....
Beryllium, total	7440–41–7	1.2	.....
Cadmium, total	7440–43–9	ND	1.2

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 Btu/lb)	Minimum required detection limit (mg/kg)
Chromium, total	7440–47–3	2.3	
Cobalt	7440–48–4	4.6	
Lead, total	7439–92–1	31	
Manganese	7439–96–5	1.2	
Mercury, total	7439–97–6	0.25	
Nickel, total	7440–02–0	58	
Selenium, total	7782–49–2	0.23	
Silver, total	7440–22–4	2.3	
Thallium, total	7440–28–0	23	
Hydrocarbons:			
Benzo[a]anthracene	56–55–3	2400	
Benzene	71–43–2	4100	
Benzo[b]fluoranthene	205–99–2	2400	
Benzo[k]fluoranthene	207–08–9	2400	
Benzo[a]pyrene	50–32–8	2400	
Chrysene	218–01–9	2400	
Dibenzo[a,h]anthracene	52–70–3	2400	
7,12-Dimethylbenz[a]anthracene	57–97–6	2400	
Fluoranthene	206–44–0	2400	
Indeno(1,2,3-cd)pyrene	193–39–5	2400	
3-Methylcholanthrene	56–49–5	2400	
Naphthalene	91–20–3	2400	
Toluene	108–88–3	36000	
Oxygenates:			
Acetophenone	98–86–1	2400	
Acrolein	107–02–8	39	
Allyl alcohol	107–18–6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117–81–7	2400	
Butyl benzyl phthalate	85–68–7	2400	
o-Cresol [2-Methyl phenol]	95–48–7	2400	
m-Cresol [3-Methyl phenol]	108–39–4	2400	
p-Cresol [4-Methyl phenol]	106–44–5	2400	
Di-n-butyl phthalate	84–74–2	2400	
Diethyl phthalate	84–66–2	2400	
2,4-Dimethylphenol	105–67–9	2400	
Dimethyl phthalate	131–11–3	2400	
Di-n-octyl phthalate	117–84–0	2400	
Endothall	145–73–3	100	
Ethyl methacrylate	97–63–2	39	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110–80–5	100	
Isobutyl alcohol	78–83–1	39	
Isosafrole	120–58–1	2400	
Methyl ethyl ketone [2-Butanone]	78–93–3	39	
Methyl methacrylate	80–62–6	39	
1,4-Naphthoquinone	130–15–4	2400	
Phenol	108–95–2	2400	
Propargyl alcohol [2-Propyn-1-ol]	107–19–7	30	
Safrole	94–59–7	2400	
Sulfonated Organics:			
Carbon disulfide	75–15–0	ND	39
Disulfoton	298–04–4	ND	2400
Ethyl methanesulfonate	62–50–0	ND	2400
Methyl methanesulfonate	66–27–3	ND	2400
Phorate	298–02–2	ND	2400
1,3-Propane sultone	1120–71–4	ND	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689–24–5	ND	2400
Thiophenol [Benzenethiol]	108–98–5	ND	30
O,O,O-Triethyl phosphorothioate	126–68–1	ND	2400
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75–05–8	ND	39
2-Acetylaminofluorene [2–AAF]	53–96–3	ND	2400
Acrylonitrile	107–13–1	ND	39
4-Aminobiphenyl	92–67–1	ND	2400
4-Aminopyridine	504–24–5	ND	100
Aniline	62–53–3	ND	2400
Benzidine	92–87–5	ND	2400
Dibenz[a,j]acridine	224–42–0	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297–97–2	ND	2400
Dimethoate	60–51–5	ND	2400
p-(Dimethylamino) azobenzene [4-Dime thylaminoazobenzene]	60–11–7	ND	2400

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 Btu/lb)	Minimum required detection limit (mg/kg)
3,3[prime]-Dimethylbenzidine	119–93–7	ND	2400
α,α-Dimethylphenethylamine	122–09–8	ND	2400
3,3[prime]-Dimethoxybenzidine	119–90–4	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99–65–0	ND	2400
4,6-Dinitro-o-cresol	534–52–1	ND	2400
2,4-Dinitrophenol	51–28–5	ND	2400
2,4-Dinitrotoluene	121–14–2	ND	2400
2,6-Dinitrotoluene	606–20–2	ND	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88–85–7	ND	2400
Diphenylamine	122–39–4	ND	2400
Ethyl carbamate [Urethane]	51–79–6	ND	100
Ethylenethiourea (2-Imidazolidinethione)	96–45–7	ND	110
Famphur	52–85–7	ND	2400
Methacrylonitrile	126–98–7	ND	39
Methapyrilene	91–80–5	ND	2400
Methomyl	16752–77–5	ND	57
2-Methyllactonitrile [Acetone cyanohydrin]	75–86–5	ND	100
Methyl parathion	298–00–0	ND	2400
MNNG (N-Metyl-N-nitroso-N[prime]-nitroguanidine)	707–25–7	ND	110
1-Naphthylamine [α-Naphthylamine]	134–32–7	ND	2400
2-Naphthylamine [(β-Naphthylamine]	91–59–8	ND	2400
Nicotine	54–11–5	ND	100
4-Nitroaniline, [p-Nitroaniline]	100–01–6	ND	2400
Nitrobenzene	98–96–3	ND	2400
p-Nitrophenol, [p-Nitrophenol]	100–02–7	ND	2400
5-Nitro-o-toluidine	99–55–8	ND	2400
N-Nitrosodi-n-butylamine	924–16–3	ND	2400
N-Nitrosodiethylamine	55–18–5	ND	2400
N-Nitrosodiphenylamine [Diphenylnitrosamine]	86–30–6	ND	2400
N-Nitroso-N-methylethylamine	10595–95–6	ND	2400
N-Nitrosomorpholine	59–89–2	ND	2400
N-Nitrosopiperidine	100–75–4	ND	2400
N-Nitrosopyrrolidine	930–55–2	ND	2400
2-Nitropropane	79–46–9	ND	2400
Parathion	56–38–2	ND	2400
Phenacetin	62–44–2	ND	2400
1,4-Phenylene diamine [p-Phenylenediamine]	106–50–3	ND	2400
N-Phenylthiourea	103–85–5	ND	57
2-Picoline [alpha-Picoline]	109–06–8	ND	2400
Propylthioracil [6-Propyl-2-thiouracil]	51–52–5	ND	100
Pyridine	110–86–1	ND	2400
Strychnine	57–24–9	ND	100
Thioacetamide	62–55–5	ND	57
Thiofanox	39196–18–4	ND	100
Thiourea	62–56–6	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95–80–7	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823–40–5	ND	57
o-Toluidine	95–53–4	ND	2400
p-Toluidine	106–49–0	ND	100
1,3,5-Trinitrobenzene [sym-Trinitobenzene]	99–35–4	ND	2400
Halogenated Organics:			
Allyl chloride	107–05–1	ND	39
Aramite	140–57–8	ND	2400
Benzal chloride [Dichloromethyl benzene]	98–87–3	ND	100
Benzyl chloride	100–44–77	ND	100
bis(2-Chloroethyl)ether [Dichoroethyl ether]	111–44–4	ND	2400
Bromoform [Tribromomethane]	75–25–2	ND	39
Bromomethane [Methyl bromide]	74–83–9	ND	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101–55–3	ND	2400
Carbon tetrachloride	56–23–5	ND	39
Chlordane	57–74–9	ND	14
p-Chloroaniline	106–47–8	ND	2400
Chlorobenzene	108–90–7	ND	39
Chlorobenzilate	510–15–6	ND	2400
p-Chloro-m-cresol	59–50–7	ND	2400
2-Chloroethyl vinyl ether	110–75–8	ND	39
Chloroform	67–66–3	ND	39
Chloromethane [Methyl chloride]	74–87–3	ND	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91–58–7	ND	2400
2-Chlorophenol [o-Chlorophenol]	95–57–8	ND	2400

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 Btu/lb)	Minimum required detection limit (mg/kg)
Chloroprene [2-Chloro-1,3-butadiene]	1126–99–8	ND	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94–75–7	ND	7
Diallate	2303–16–4	ND	3400
1,2-Dibromo-3-chloropropane	96–12–8	ND	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95–50–1	ND	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541–73–1	ND	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106–46–7	ND	2400
3,3[prime]-Dichlorobenzidine	91–94–1	ND	2400
Dichlorodifluoromethane [CFC–12]	75–71–8	ND	39
1,2-Dichloroethane [Ethylene dichloride]	107–06–2	ND	39
1,1-Dichloroethylene [Vinylidene chloride]	75–35–4	ND	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111–91–1	ND	2400
2,4-Dichlorophenol	120–83–2	ND	2400
2,6-Dichlorophenol	87–65–0	ND	2400
1,2-Dichloropropane [Propylene dichloride]	78–87–5	ND	39
cis-1,3-Dichloropropylene	10061–01–5	ND	39
trans-1,3-Dichloropropylene	10061–02–6	ND	39
1,3-Dichloro-2-propanol	96–23–1	ND	30
Endosulfan I	959–98–8	ND	1.4
Endosulfan II	33213–65–9	ND	1.4
Endrin	72–20–8	ND	1.4
Endrin aldehyde	7421–93–4	ND	1.4
Endrin Ketone	53494–70–5	ND	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106–89–8	ND	30
Ethylidene dichloride [1,1-Dichloroethane]	75–34–3	ND	39
2-Fluoroacetamide	640–19–7	ND	100
Heptachlor	76–44–8	ND	1.4
Heptachlor epoxide	1024–57–3	ND	2.8
Hexachlorobenzene	118–74–1	ND	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87–68–3	ND	2400
Hexachlorocyclopentadiene	77–47–4	ND	2400
Hexachloroethane	67–72–1	ND	2400
Hexachlorophene	70–30–4	ND	59000
Hexachloropropene [Hexachloropropylene]	1888–71–7	ND	2400
Isodrin	465–73–6	ND	2400
Kepone [Chlordecone]	143–50–0	ND	4700
Lindane [gamma-BHC] [gamma-Hexachlorocyclohexane]	58–89–9	ND	1.4
Methylene chloride [Dichloromethane]	75–09–2	ND	39
4,4[prime]-Methylene-bis(2-chloroaniline)	101–14–4	ND	100
Methyl iodide [Iodomethane]	74–88–4	ND	39
Pentachlorobenzene	608–93–5	ND	2400
Pentachloroethane	76–01–7	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82–68–8	ND	2400
Pentachlorophenol	87–88–5	ND	2400
Pronamide	23950–58–5	ND	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93–72–1	ND	7
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746–01–6	ND	30
1,2,4,5-Tetrachlorobenzene	95–94–3	ND	2400
1,1,2,2-Tetrachloroethane	79–35–4	ND	39
Tetrachloroethylene [Perchloroethylene]	127–18–4	ND	39
2,3,4,6-Tetrachlorophenol	58–90–2	ND	2400
1,2,4-Trichlorobenzene	120–82–1	ND	2400
1,1,1-Trichloroethane [Methyl chloroform]	71–56–6	ND	39
1,1,2-Trichloroethane [Vinyl trichloride]	79–00–5	ND	39
Trichloroethylene	79–01–6	ND	39
Trichlorofluoromethane [Trichlormonofluoromethane]	75–69–4	ND	39
2,4,5-Trichlorophenol	95–95–4	ND	2400
2,4,6-Trichlorophenol	88–06–2	ND	2400
1,2,3-Trichloropropane	96–18–4	ND	39
Vinyl Chloride	75–01–4	ND	39

Notes: NA—Not Applicable. ND—Nondetect.
[1] 25 or individual halogenated organics listed below.

[FR Doc. E7–11130 Filed 6–14–07; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,
June 15, 2007

Part III

Department of Justice

Antitrust Division

United States v. Monsanto Co.; Proposed Final Judgement and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Monsanto Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Monsanto Co.*, Civ. Action No. 1:07CV00992. On May 31, 2007, the United States filed a Complaint alleging that the proposed acquisition by Monsanto Company (''Monsanto'') of Delta and Pine Land Company (''DPL'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for the development, breeding, and sale of traited cottonseed in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee) and Southeast (Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia) United States. Specifically, the Complaint alleges that Monsanto's acquisition of Delta and Pine Land would enhance Monsanto's ability and incentive to raise traited cottonseed prices and eliminate Delta and Pine Land as a partner independent of Monsanto for competing trait developers. The proposed Final Judgment, lodged at the same time as the Complaint, requires the parties to divest (1) Monsanto's Stoneville Pedigreed Seed Company; (2) other Monsanto cotton breeding assets; (3) specified lines of Delta and Pine Land cottonseed to the acquirer of the Stoneville assets; (4) and specified lines of Delta and Pine Land cottonseed containing the VipCot transgenic trait to Syngenta AG. It also requires Monsanto to modify certain licenses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 215, Washington, DC 20530 (202–514–2481), on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (202–307–6349).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530, Plaintiff, v. Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, MO 63167, and Delta and Pine Land Company, 1 Cotton Row, Scott, MS 38772, Defendants

Civil Case No.:
Case: 1:07–cv–00992.
Assigned To: Urbina, Ricardo M.
Assign. Date: 5/31/2007.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of defendants Monsanto Company (''Monsanto'') and Delta and Pine Land Company (''DPL'') and allege as follows:

1. In 2006, cottonseed was planted on more than 15 million acres in the United States and generated more than $5 billion in annual revenues for United States farmers. Cotton is grown across the Southern United States from Virginia, the Carolinas, Georgia, and Florida on the East Coast to California on the West Coast.

2. Farmers grow substantially all of this important crop from cottonseed that has been enhanced through the introduction of biotechnology traits (''traited cottonseed''). Traited cottonseed results from combining cottonseed stock that has attractive growing characteristics (such as producing a high yield of cotton per acre) with performance traits foreign to cotton that are inserted through genetic engineering.

3. Monsanto is the largest producer and supplier of biotechnology traits sold in cottonseed in the United States, with over 96% of United States traited cottonseed containing Monsanto traits. Monsanto is also one of the largest sellers of traited cottonseed in the United States, primarily through its Stoneville Pedigreed Seed Company (''Stoneville'').

4. DPL is the largest producer of cottonseed in the United States. DPL is the leading seller in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee), where DPL sells 79% of all traited cottonseed, and the Southeast (Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia), where DPL sells 87% of all traited cottonseed.

5. In the 1980s, Monsanto partnered with DPL to introduce cottonseed containing Monsanto traits. DPL's experienced and knowledgeable cotton breeders and large collection of high-quality germplasm (the genetic material of a cottonseed that gives the plant its characteristics) provided Monsanto with an unparalleled avenue through which to commercialize and market its traits. The combination of Monsanto traits and DPL cottonseed has been highly successful, particularly in the MidSouth and Southeast, due to the performance of DPL's cottonseed and the value of Monsanto's biotechnology traits in those regions.

6. Monsanto's position as the dominant supplier of traits used in cottonseed was jeopardized in the early 2000s when DPL began to partner with other biotechnology companies. Through these partnerships, DPL's germplasm library and breeding capabilities were available to alternative trait developers, allowing them to work toward introducing new traits in DPL cottonseed that would compete with Monsanto's traits. DPL publicly stated its intent to replace Monsanto traits in its products and planned to launch products with non-Monsanto traits as early as the 2009 growing season, with additional products to follow.

7. Spurred by this competitive threat and recognizing the potential for a successful pairing of DPL's cottonseed with competing traits, Monsanto purchased Stoneville to position Monsanto to compete vigorously with DPL. Monsanto aggressively worked to develop Stoneville's germplasm and its traited cottonseed sales and also continued its efforts to develop germplasm and expand traited cottonseed sales through its Cotton States business unit.

8. The proposed merger will consolidate Monsanto's and DPL's traited cottonseed sales, eliminating competition between these firms in the sale of cottonseed. DPL and Monsanto

together would control over 95% of sales in the important MidSouth and Southeast regions, where harvested cotton garners higher prices per bale, and where cottonseed traits are most valued by farmers. The proposed merger will also eliminate DPL as a partner independent of Monsanto for competing trait developers, substantially delaying or preventing the development and introduction of cottonseed containing non-Monsanto traits. Accordingly, Monsanto's merger with DPL would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Jurisdiction and Venue

9. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Monsanto and DPL are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and the parties pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26; and 28 U.S.C. 1331, 1337.

11. The Defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants

12. Defendant Monsanto is a Delaware corporation, with its headquarters located in St. Louis, Missouri. Monsanto is a leading global provider of agricultural products for farmers, including seeds for cotton, soybeans, and corn; traits that help farmers control insects and weeds; and crop protection chemicals such as the herbicide Roundup, a branded version of the chemical glyphosate. Monsanto had total company revenues of more than $7.3 billion in 2006.

13. Defendant DPL is a Delaware corporation, with its headquarters located in Scott, Mississippi. DPL is the largest cottonseed producer in the world. DPL's sales in the United States in 2006 exceeded $400 million.

III. Trade and Commerce

A. Affected Commerce

Cottonseed Varieties

14. Cottonseed varieties differ in their performance, including the yield, the strength and the length of the cotton fibers, and the adaptability of the cottonseed to specific weather conditions and soil types. Varieties that perform best in certain regions of the country, such as the drier areas of the Southwest (including West Texas, Kansas, and Oklahoma) do not typically perform well in other regions, such as the MidSouth and the Southeast. Farmers select cottonseed varieties that have the best performance characteristics for the area in which the cottonseed will be planted, with the primary focus on yield.

15. To be competitive, cottonseed companies must continually work on developing new and improved cottonseed varieties through their breeding programs. Cotton breeding is a costly and time-consuming process in which the cottonseed company selects lines to breed together (or ''cross''), plants the cottonseed produced from that initial cross, and then selects the best plants for further crossing to create a variety with the desired characteristics. In most cases, it takes eight to ten years from the initial cross until a new cottonseed variety is ready for market.

16. The success of a cottonseed company's breeding program is dependent on many factors, the most important of which is the quantity and quality of available breeding materials, i.e. germplasm. A company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.

17. DPL has the largest cotton germplasm collection, with by far the greatest track record of success in the important MidSouth and Southeast regions, and an extensive breeding program for cottonseed. It has eight research or breeding facilities in the United States and five located elsewhere in the world. It has more breeding capabilities than any competitor and over ninety years of germplasm development.

Traits for Cottonseed

18. Historically, farmers grew cotton from conventional cottonseed that contained naturally occurring characteristics. Cotton farming with conventional cottonseed involved labor intensive and costly herbicide and insecticide spraying programs that required multiple applications at very specific times in the growing season. Failure to spray or to correctly time the applications could result in substantial crop damage.

19. In the 1980s, Monsanto developed a trait that could be inserted into cotton plants to make plants resistant to certain insects. It also developed an herbicide-tolerant trait that would make cotton plants grown from cottonseed with the trait resistant to certain herbicides sprayed to kill weeds, allowing farmers to spray herbicides less precisely without killing the young plants.

20. To gain acceptance by farmers, the traits had to be delivered in cottonseed lines that performed well in the growing area where the farmer was located. In 1988, Monsanto approached DPL to develop and commercialize cottonseed with the Monsanto insect-resistant and herbicide-tolerant traits. DPL was then, and still is, the market leader in cottonseed, with what was considered the best germplasm and the most sought-after varieties.

21. The companies proceeded with the development and commercialization process, which involved inserting the Monsanto trait into DPL germplasm, evaluating plant lines grown from that germplasm, and breeding promising candidate plants to produce varieties with desired characteristics. In 1996, DPL began to sell the first cottonseed with Monsanto's initial insect-resistant trait (marketed under the name ''Bollgard''), and, the following year, it introduced a variety with Monsanto's initial herbicide-tolerant trait (marketed under the name ''Roundup Ready'').

22. Farmers, particularly those in the MidSouth and Southeast, quickly adopted traited cottonseed because its use significantly lowered overall farming costs, increased yields, and reduced the risk of crop loss. Today, almost all cottonseed varieties planted in the United States are traited, and, in 2006, over 96% of the traited cottonseed sold in the United States contained traits developed by Monsanto.

23. When farmers acquire traited cottonseed, they pay a price per bag to the seed distributor, who pays the seed manufacturer for the seed, and a separate license fee (commonly referred to as the ''technology fee'') to the developer of the trait. Typically, the trait developer shares a portion of the technology fee with the seed manufacturer. The technology fee can constitute as much as 80% of farmers' total costs for a bag of traited cottonseed.

DPL's Trait Development With Monsanto's Competitors

24. Following Monsanto's and DPL's successful introduction oftraited cottonseed, they agreed in 1998 that Monsanto would acquire DPL. The Antitrust Division of the United States Department of Justice investigated the proposed transaction. In late 1999, while the transaction was still under review, Monsanto decided to abandon

the transaction. DPL thus remained an independent company.

25. Despite ensuing litigation from the companies' failed attempt to merge, DPL continued to develop and market cottonseed varieties with Monsanto's traits. DPL also commenced a strategy to replace (or ''trade-out'') the Monsanto traits in DPL cottonseed with traits of other companies. DPL believed that this strategy would be profitable for DPL because competing trait developers would offer DPL a higher percentage of the technology fee for traits than would Monsanto. In DPL's suit against Monsanto for breach of the merger agreement, DPL alleged significant financial losses resulting from the delay that the failed merger caused to DPL's efforts to develop traits with companies other than Monsanto.

26. Pursuant to the trade-out strategy, DPL has worked with several other biotechnology companies, including Dow AgroSciences, DuPont, Syngenta Crop Protection AG and Bayer CropScience, to develop and commercialize cottonseed containing the traits developed by these companies that would compete with cottonseed containing Monsanto's traits. DPL is an attractive partner that is well suited to quickly introduce new trait technologies due to the strength and breadth of its germplasm base and breeding programs as well as its technical service capabilities, know-how, brand recognition and market position.

27. DPL's trait license with Monsanto also makes DPL an attractive partner for competing trait developers. Most farmers in the United States buy cottonseed containing traits that provide both herbicide tolerance and insect resistance. In the MidSouth and Southeast United States, the vast majority of farmers use both traits. DPL's trait licenses with Monsanto allow DPL to offer competing trait developers the ability to combine or ''stack'' their traits in DPL cottonseed along with Monsanto traits. This stacking right would allow, for example, the developer of an insect-resistant trait to bring that trait to market in cottonseed that also contains a Monsanto herbicide-tolerant trait (*i.e.*, Roundup Ready or the more-recent version, Roundup Ready Flex). Monsanto's trait licenses with most other cottonseed companies, by contrast, severely restrict the ability of these companies to work with other trait developers, with some of these licenses prohibiting the stacking of cottonseed containing Monsanto traits with another company's traits and others subjecting the licensees to severe penalties if they stack non-Monsanto traits with Monsanto traits.

28. Even with the advantages that partnering with DPL offers Monsanto's competing trait developers, the process to develop, breed and commercialize cotton varieties with traits typically takes eight to twelve years and costs over $40 million. The process often requires thousands of attempts before developing a traited cottonseed that then can be used to breed commercial varieties. In addition, extensive regulatory approvals, both in the United States and abroad, are required.

29. DPL's trait-development work with Monsanto's competitors has recently begun to show results. DPL's developmental work with Syngenta resulted in a 2004 agreement to commercialize cottonseed with Syngenta's VipCot insect-resistant traits. DPL expects to begin marketing such cottonseed as early as 2009. The DPL/Syngenta agreement provides that DPL will receive 70% of the net trait technology fees earned through sales of this product, compared with the 30% that DPL earns pursuant to its Monsanto agreement.

Monsanto's Competitive Reaction to DPL's ''Trade-Out'' Plan

30. Monsanto recognized that its and DPL's ''paths will continue to diverge'' as DPL continues its strategy to replace Monsanto traits in DPL cottonseed with traits developed by Monsanto's competitors. Driven by the competitive threat posed by DPL's work with these other companies, Monsanto set about building its own cottonseed business.

31. In 2002, Monsanto began Cotton States, through which Monsanto obtains licenses on germplasm developed by private breeders and universities, breeds its traits into the germplasm, and out-licenses the resulting traited varieties to sellers of cottonseed for sale under their private labels.

32. In 2005, Monsanto repurchased Stoneville, the second-largest traited cottonseed company in the MidSouth and Southeast United States. Monsanto had previously owned Stoneville but sold it in 1999 before abandoning its attempt to acquire DPL. Upon reacquiring Stoneville, Monsanto immediately invested capital to improve Stoneville's competitive position.

33. Monsanto aggressively worked to strengthen its cottonseed business by, among other things, focusing on advanced breeding techniques and germplasm development and investing in breeding facilities. Monsanto predicted internally that these investments would enable Monsanto to increase its share of the cottonseed business at the expense of DPL and other companies.

B. Relevant Markets

34. Across regions such as the MidSouth and Southeast, growing conditions for cotton differ due to weather conditions, soil type, and varied demands for weed and insect control. Fanners demand cottonseed varieties that produce high yield for their particular growing conditions. Monsanto and DPL recognize this demand and market cottonseed varieties by region.

35. In many regions of the country, including the MidSouth and Southeast, farmers demand that cottonseed have traits to provide insect resistance and herbicide tolerance. Monsanto prices traits by region.

36. Cotton fanners consider cotton the most valuable crop for their land, and the cost of the traited cottonseed amounts to only a fraction of the total cost of growing cotton. If there were a small but significant increase in price of traited cottonseed within regions such as the MidSouth and Southeast, it is not likely that farmers would switch to other crops or switch purchases to conventional (non-traited) cottonseed or cottonseed varieties not well suited for their regions in sufficient volumes to make the price increase unprofitable. The development, commercialization, and sale of traited cottonseed constitutes a line of commerce or product market, and the MidSouth and Southeast United States are sections of the country or geographic markets, within the meaning of Section 7 of the Clayton Act.

IV. Anticompetitive Effects

A. Concentration

37. DPL is the largest firm in the traited cottonseed market in the United States. It is even more dominant in the MidSouth United States market, with 79% of the traited cottonseed sales, and the Southeast United States market, with over 87% of the traited cottonseed sales.

38. Monsanto is the second-largest traited cottonseed company in the MidSouth and Southeast United States markets, with 17% of sales in the MidSouth United States market and 8% of sales in the Southeast United States market.

39. After the merger, Monsanto would account for more than 95% of sales of traited cottonseed in the MidSouth United States market and 95% of sales in the Southeast United States market.

40. Using a measure of market concentration called the Herfindahl-

Hirschman Index (''HHI''), explained in Appendix A, Monsanto's merger with DPL would result in a post-merger HHI of 9110 in the MidSouth United States market, with an increase of 331O, and a post-merger HHI of 9184 in the Southeast United States, with an increase of 1489.

B. Effect of Transaction

41. The merger will eliminate competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed. As a result, farmers likely will have fewer choices of, and face higher prices for, traited cottonseed.

42. The merger will also eliminate DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto. DPL's current efforts to develop and commercialize cottonseed with Syngenta's VipCot insect-resistant technology, which would be competitive with Monsanto's Bollgard and more-recent Bongard II traits, will be substantially delayed or prevented. Further, the merger will likely delay if not deter efforts to develop other traits that would compete with Monsanto traits and that would provide benefits to United States cotton farmers, including other insect-resistant traits, herbicide-tolerant traits, and potentially other cottonseed traits. As a result, farmers likely will have fewer choices of, and face higher prices for, traited cottonseed.

V. Entry

43. Entry into the traited cottonseed business requires the assets and expertise both to breed high-performing varieties of cottonseed and to develop or access herbicide-tolerant and insect-resistant traits to breed into the cottonseed. Each of those steps requires many years and the investment of tens of millions of dollars.

44. Entry into the traited cottonseed business would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract an anticompetitive increase in the price of traited cottonseed by the merged Monsanto or DPL.

VI. Violation Alleged

45. The effect of Monsanto's merger with DPL may be substantially to lessen competition in the market for the development, production, and sale of traited cottonseed in violation of Section 7 of the Clayton Act. Unless restrained, the transaction would likely have the following effects, among others:

a. Competition in the market for the development, production, and sale of traited cottonseed in the MidSouth and Southeast United States would be substantially lessened; and

b. Cotton farmers will suffer harm as a result of fewer choices and higher prices for traited cottonseed.

VII. Request for Relief

Plaintiff requests that this Court adjudicate and decree as follows:

1. That Monsanto's proposed merger with DPL would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

2. That Monsanto and DPL be permanently enjoined from carrying out their proposed merger, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Monsanto and DPL;

3. That Plaintiff be awarded the costs of this action; and

4. Such other relief as the Court may deem just and proper.

Dated: May 31, 2007.

Respectfully submitted,

For Plaintiff United States

Thomas O. Barnett,

Assistant Attorney General.

David L. Meyer,

Deputy Assistant Attorney General.

J. Robert Kramer II,

Director of Operations.

Donna N. Kooperstein,
Chief, Transportation, Energy & Agriculture Section.

William H. Stallings,

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Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW., Suite 500, Washington, DC 20004 Telephone: (202) 307–6607, Facsimile: (202) 307–2784.

Appendix A—Definition of HHI

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). (Note: Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, Monsanto Company and Delta and Pine Land Company, Defendants.

Case: 1:07–cv–00992 *Assigned To:* Urbina, Ricardo M. *Assign Date:* 5/31/2007 *Description:* Antitrust.

Proposed Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on May 31, 2007, Plaintiff and Defendants, Monsanto Company (''Monsanto'') and Delta and Pine Land Company (''DPL''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets and alterations of certain existing license terms by Defendants to assure that competition is not substantially lessened;

And whereas, Plaintiff requires Defendants to make certain divestitures and alter certain existing license terms for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiff that the divestitures and license term alterations required below can and shall be made and that Defendants shall later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or license alteration provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer of the Enhanced Stoneville Assets'' means the entity or entities to whom Defendant Monsanto divests the Enhanced Stoneville Assets.

B. ''Cotton States'' means Defendant Monsanto's cotton variety licensing business pursuant to which Defendant Monsanto licenses other cottonseed companies to produce or sell Defendant Monsanto's own cotton varieties, cotton varieties Defendant Monsanto in-licenses from other breeders, or cotton varieties Defendant Monsanto produces from such varieties.

C. ''DPL'' means Defendant Delta and Pine Land Company, a Delaware corporation with its headquarters in Scott, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, interests in partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''DPL Acquirer'' means the entity to whom Defendant Monsanto divests Defendant DPL.

E. ''Monsanto'' means Defendant Monsanto Company, a Delaware corporation with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Stoneville'' means all assets used exclusively or primarily in, or to support, the U.S. business of Stoneville Pedigreed Seed Company, including, but not limited to the assets described in Schedule A.

G. ''Enhanced Stoneville Assets'' means Stoneville and the additional assets, properties, and rights listed in Schedule B.

H. ''Syngenta'' means Syngenta Crop Protection AG, a Swiss corporation with its headquarters in Basel, Switzerland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Vip Cot Assets'' means the assets, properties, and rights listed in Schedule C.

III. Applicability

A. This Final Judgment applies to Defendants Monsanto and DPL, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets that include the Enhanced Stoneville Assets or the VipCot Assets, they shall require, as a condition of the sale or other disposition, that the purchaser(s) agree to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture of Enhanced Stoneville Assets

A. Defendants are ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the Complaint in this matter, to divest the Enhanced Stoneville Assets to an acquirer acceptable to Plaintiff in Plaintiff's sole discretion. Defendants shall use their best efforts to accomplish the divestiture of the Enhanced Stoneville Assets as expeditiously as possible. Plaintiff, in its sole discretion, may grant one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in each such circumstance.

B. Within two (2) business days following execution of a definitive agreement or agreements for the divestiture of the Enhanced Stoneville Assets, or the filing of this Final Judgment, whichever is later, Defendants shall notify Plaintiff in writing of the proposed divestiture. The notice shall set forth the details of the proposed divestiture, including a list of the name, address, and telephone number of each person who offered, or expressed an interest in or desire, to acquire any ownership interest in the Enhanced Stoneville Assets, together with full details of the same. Defendants need not include in this notice information about any persons previously identified in an affidavit filed in compliance with this Final Judgment as offering, or expressing an interest in or desiring, to acquire any ownership interest in the Enhanced Stoneville Assets. Defendants shall include with the notice a copy of the divestiture agreement or agreements and copies of any other agreements entered into by either or both of the Defendants and the proposed Acquirer of the Enhanced Stoneville Assets since the Complaint in this matter was filed, or up to three (3) months before the filing of the Complaint in this matter. Defendants may incorporate by reference in this notice any responsive information or documents previously provided to Plaintiff, provided that Defendants identify with specificity when the information or documents were previously provided and, if the information or documents were part of a larger submission, where in the submission the information or documents may be located.

C. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendants, the proposed Acquirer of the Enhanced Stoneville Assets, or any other third party, additional information concerning the proposed divestiture, the proposed Acquirer of the Enhanced Stoneville Assets, and any other potential acquirer. Defendants shall furnish any additional information requested of Defendants within fifteen (15) calendar days of the receipt of the request, unless Defendants and Plaintiff shall otherwise agree.

D. Within fifteen (15) calendar days after receipt of the notice or within ten (10) calendar days after Plaintiff has been provided the additional information requested from Defendants, the proposed Acquirer of the Enhanced Stoneville Assets, and any third party, whichever is later, Plaintiff shall provide written notice to Defendants stating whether or not it objects to the proposed divestiture. If Plaintiff provides written notice that it does not object, the divestiture may be consummated. Absent written notice that Plaintiff does not object to the proposed Acquirer of the Enhanced Stoneville Assets or upon objection by Plaintiff, the divestiture of the Enhanced Stoneville Assets to that proposed Acquirer shall not be consummated.

E. The divestiture of the Enhanced Stoneville Assets shall be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that the Enhanced Stoneville Assets can and shall be used by the Acquirer of the Enhanced Stoneville Assets to operate a viable, ongoing business engaged in the development, production and sale of traited cottonseed. The divestiture of the Enhanced Stoneville Assets:

(1) Shall be made to an Acquirer of the Enhanced Stoneville Assets that, in Plaintiff's sole judgment, has the intent and capability (including the necessary

managerial, operational, technical, and financial capability and intellectual property rights) of competing effectively in the business of developing, producing and selling traited cottonseed in the United States, including a credible commitment to the traited cottonseed market;

(2) Shall be accomplished so as to satisfy Plaintiff, in its sole discretion, that the divestiture shall not result in the substantial lessening of competition for the development, production, and sale of traited cottonseed in any geographic area; and

(3) Shall be accomplished so as to satisfy Plaintiff, in its sole discretion, that none of the terms of any agreement between an Acquirer of the Enhanced Stoneville Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

F. Defendants shall provide to the Acquirer of the Enhanced Stoneville Assets and Plaintiff information relating to the personnel primarily involved in the operation of Stoneville to enable the Acquirer of the Enhanced Stoneville Assets to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer of the Enhanced Stoneville Assets to employ any such personnel.

G. For a period of two (2) years from the filing of the Complaint in this matter, Defendants shall not solicit to hire, or hire, any individual primarily involved in the operation of Stoneville on the date of the filing of the Complaint in this matter who receives a substantially equivalent offer of employment from the Acquirer, unless such individual is terminated or laid off by the Acquirer, or the Acquirer agrees that Defendants may solicit and employ that individual.

H. Defendants shall not take any action that shall impede in any way the operation, use or divestiture of the Enhanced Stoneville Assets.

I. Defendants shall warrant to the Acquirer of the Enhanced Stoneville Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset that shall have a material adverse effect on the operation of the Enhanced Stoneville Assets, and that following the sale of the Enhanced Stoneville Assets, Defendants shall not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the use or operation of the Enhanced Stoneville Assets based on actions or inactions that existed prior to the date of divestiture.

V. Divestiture of VipCot Assets

A. Defendants are ordered and directed, in accordance with the terms of this Final Judgment, to offer Syngenta the VipCot Assets listed in the attached Schedule C within thirty (30) calendar days of the filing of the Complaint in this matter. The offer shall remain open for at least six (6) months. Defendants shall use their best efforts to accomplish the divestiture of the VipCot Assets as expeditiously as possible, but in any event no later than ninety (90) calendar days after the divestiture of the Enhanced Stoneville Assets or thirty (30) calendar days after Syngenta accepts the offer, whichever is latest. Plaintiff, in its sole discretion, may extend the time period for Defendants to divest the VipCot Assets to Syngenta by granting one or more extensions, not to exceed ninety (90) calendar days in total, and shall notify the Court in each such circumstance.

B. Prior to transmitting to Syngenta the offer for the assets described in the attached Schedule C, Defendants shall provide Plaintiff with copies of the offer for the approval of the Plaintiff in its sole discretion. Along with the offer, Defendants shall provide Plaintiff copies of any other agreements not previously provided to Plaintiff entered into by either or both of the Defendants and Syngenta since the Complaint in this matter was filed, or up to three (3) months before the filing of the Complaint in this matter. Within five (5) business days following receipt of the offer, Plaintiff shall provide written notice to Defendants stating whether the offer must be amended to meet the objectives of the divestiture of the VipCot Assets. Absent written notice that Plaintiff does not object to the offer, the divestiture of the VipCot Assets to Syngenta pursuant to the offer shall not proceed. Upon objection by Plaintiff, Defendants shall alter the terms of the offer to satisfy Plaintiff in its sole discretion.

C. Defendants shall permit Syngenta to have reasonable access to personnel and to any and all financial, operational, or other documents and information relating to the VipCot Assets customarily provided as part of a due diligence process.

D. Defendants shall not take any action that shall harm the VipCot Assets or impede in any way the divestiture of the VipCot Assets.

VI. Changes in Third Party Licenses

A. Defendant Monsanto agrees to offer to its licensees, within thirty (30) calendar days of the date of the sale of the Enhanced Stoneville Assets, to make the following changes to its third-party cottonseed trait and Cotton States licenses, subject to the approval of Plaintiff in its sole discretion:

1. Current Cotton Insect Resistance and Herbicide Tolerance Trait Licensing—Agreements: Defendant Monsanto shall modify its current cottonseed trait licenses to provide the licensees with the flexibility Defendant DPL currently has to develop, market or sell cottonseed containing non-Monsanto traits by removing any provisions that require or incentivize the licensee to develop, market or sell cottonseed containing only traits from Defendant Monsanto.

2. Cotton States Licenses: Defendant Monsanto shall modify its Cotton—States licenses to eliminate any provision that allows Defendant Monsanto to terminate the license if the licensee sells cottonseed containing non-Monsanto traits in brands not licensed under the Cotton States license.

B. Prior to making the offers, and no later than five (5) days after the date of sale of the Enhanced Stoneville Assets, Defendant Monsanto shall provide Plaintiff with copies of the offers for the approval of Plaintiff in its sole discretion. Within five (5) days of receipt of the offers to modify the license agreements, Plaintiff shall provide written notice to Defendant Monsanto stating whether the offers must be amended. Absent written notice that Plaintiff does not object to the offers, Defendant Monsanto may not proceed with offering the modifications to the licensees. Upon objection by Plaintiff, Defendant Monsanto shall alter the terms of the offers to satisfy Plaintiff in its sole discretion. In the event any of the licensees do not accept the offer containing the modifications described in Section VI.A. as approved by Plaintiff in its sole discretion, Defendant Monsanto shall act as though such modification has been made and shall not enforce any license provision that is the subject of any such modification.

VII. Divestiture of Defendant DPL

A. If Defendants have not divested the Enhanced Stoneville Assets by the end of the time period permitted by this Final Judgment, Defendants shall notify Plaintiff of that fact in writing. Defendant Monsanto shall then divest DPL within sixty (60) days. If Defendant Monsanto has not divested Defendant DPL by the end of the sixty-day period, Defendant Monsanto shall notify Plaintiff of that fact in writing. Upon application of Plaintiff, the Court shall appoint a trustee selected by Plaintiff and approved by the Court to effect the divestiture of Defendant DPL.

B. Defendant Monsanto shall use its best efforts to assist the trustee in accomplishing the required divestiture of Defendant DPL, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and assets at the facilities to be divested, and Defendant Monsanto shall develop financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for confidential commercial information. In addition, Defendant Monsanto shall:

(1) Permit prospective acquirers of Defendant DPL who have been invited to submit binding bids for Defendant DPL to have reasonable access to Defendant DPL's personnel and to make such inspection of Defendant DPL and any and all financial, operational, or other documents and other information as may be relevant to the divestiture of Defendant DPL, subject to reasonable protection for confidential commercial information;

(2) Provide the DPL Acquirer and Plaintiff information relating to the personnel of Defendant DPL to enable the DPL Acquirer to make offers of employment;

(3) Take no action to interfere with any negotiations by the DPL Acquirer to employ any Defendant DPL employee;

(4) Take no action to interfere with or to impede the trustee's accomplishment of the divestiture of Defendant DPL;

(5) Warrant to the DPL Acquirer that on the date of sale each asset shall be in the same condition as when Defendant Monsanto acquired Defendant DPL, except for the harvesting of cotton plants and selection lines in the ordinary course of business, and ordinary wear and tear of assets and facilities;

(6) Warrant to the DPL Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset that have arisen since Defendant Monsanto acquired Defendant DPL; and

(7) Shall not, following divestiture of Defendant DPL, undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Defendant DPL, or otherwise take any action that shall impede in any way the permitting, operation, or divestiture of Defendant DPL.

C. Unless Plaintiff otherwise consents in writing, the divestiture of Defendant DPL pursuant to this Section of the Final Judgment, whether accomplished by Defendant Monsanto or a trustee, shall include the entirety of Defendant DPL, and shall be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that (a) Defendant DPL shall remain no less viable than when Defendant Monsanto acquired it, (b) the divestiture of Defendant DPL shall remedy the competitive harm alleged in the Complaint, and (c) none of the terms of any agreement between a DPL Acquirer and Defendant Monsanto give Defendant Monsanto the ability unreasonably to raise that person's costs, to lower that person's efficiency, or otherwise to interfere in the ability of that person to compete effectively.

D. The trustee shall have the power and authority to accomplish the divestiture of Defendant DPL at the earliest possible time to an acquirer acceptable to Plaintiff, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, and shall have such other powers as the Court deems appropriate. Subject to Section VII.F of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendant Monsanto any investment bankers, attorneys, or other agents who are reasonably necessary in the judgment of the trustee to assist in the divestiture of Defendant DPL and who shall be solely accountable to the trustee.

E. Defendant Monsanto shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Monsanto must be conveyed in writing to Plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under this Section.

F. The trustee shall serve at the cost and expense of Defendant Monsanto, on such terms and conditions as Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendant Monsanto, and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of Defendant DPL and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture of Defendant DPL and the speed with which it is accomplished, but timeliness is paramount.

G. After its appointment, the trustee shall file monthly reports with Plaintiff, Defendant Monsanto, and the Court setting forth the trustee's efforts to accomplish the divestiture of Defendant DPL, provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court and Defendant Monsanto's copy of the report shall have such confidential information redacted. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Defendant DPL, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest Defendant DPL.

H. If the trustee has not accomplished such divestiture of Defendant DPL within ninety (90) calendar days after its appointment, the trustee shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture of Defendant DPL; (2) the reasons, in the trustee's judgment, why the required divestiture of Defendant DPL has not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to Plaintiff. Plaintiff shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment which may, if necessary, include extending this Final Judgment and the term of the trustee's appointment by a period requested by Plaintiff.

I. The trustee shall notify Plaintiff and Defendant Monsanto within two (2) business days following execution of a definitive agreement for the sale of Defendant DPL. The notice shall set forth the details of the proposed divestiture of Defendant DPL and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Defendant DPL, together with full details of the same.

J. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendants, the proposed DPL Acquirer, any other third party, or the trustee, additional information concerning the proposed divestiture of Defendant DPL, the proposed DPL Acquirer, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the Defendants and Plaintiff shall otherwise agree.

K. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after Plaintiff has been provided the additional information requested from Defendant Monsanto, the proposed DPL Acquirer, any third party, and the trustee, whichever is later, Plaintiff shall provide written notice to Defendant Monsanto and the trustee stating whether or not it objects to the proposed divestiture of Defendant DPL. If Plaintiff provides written notice that it does not object, the sale of Defendant DPL may be consummated, subject only to Defendant Monsanto's limited right to object to the sale under Section VII.E of this Final Judgment. Absent written notice that Plaintiff does not object to the proposed DPL Acquirer or upon objection by Plaintiff, the sale of Defendant DPL shall not be consummated. Upon objection by Defendant Monsanto under Section VII.E, a sale of Defendant DPL proposed under this Section shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section VII of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate and Preservation of Assets Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within ten (10) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV and V, Defendants shall deliver to Plaintiff an affidavit as to the fact and manner of its compliance with Sections IV, V, and VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Enhanced Stoneville Assets, and shall describe in detail each contact with any such person during that period, including a summary of all conversations (1) Between Defendants and any Acquirer of the Enhanced Stoneville Assets, and (2) between Defendants and Syngenta with respect to the VipCot Assets. Defendants may incorporate by reference in any such affidavit any responsive information or documents previously provided to Plaintiff, provided however, that Defendants identify with specificity when the information or documents were previously provided and, if the information or documents were part of a larger submission, where in the submission the information or documents may be located. Assuming the information set forth in the affidavit is true and complete, any objection by Plaintiff to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Defendants shall keep all records of all efforts made to preserve and divest the Enhanced Stoneville Assets and VipCot Assets until one year after each such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiffs option, to require Defendants to provide copies of all books, ledgers, accounts, records and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then Plaintiff shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendant Monsanto, without providing advance notification to Plaintiff, shall not directly or indirectly acquire (1) Voting securities, (2) all or substantially all of the cotton germplasm, or (3) substantially all of the assets relating to cottonseeds or cottonseed traits, of any company that develops and sells cottonseed in the United States, or any company that has developed, or has under development traits for commercialization in cottonseed in the United States, where such acquisition would be reportable under the HSR Act but for a failure to satisfy the thresholds of 15 U.S.C. l8a(a)(2).

B. Such notification shall be provided to Plaintiff in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about cottonseeds or transgenic traits that shall be or could be used in cottonseeds. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the thirty (30) day period after notification, representatives of Plaintiff make a written request for additional information, Defendant Monsanto shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

If Defendant Monsanto divests the Enhanced Stoneville Assets and the VipCot Assets, Defendant Monsanto may not reacquire any part of the Enhanced Stoneville Assets or the VipCot Assets during the term of this Final Judgment. If Defendant Monsanto divests Defendant DPL, it may not reacquire any part of Defendant DPL during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Definitions for Schedules

1. ''Advanced Exotic Yield Lines'' means the Breeding populations and proprietary Lines created by Defendant Monsanto from a cross between *Gossypium hirsutum* and *Gossypium barbadense* that are identified in Schedule D.

2. ''Backcross'' means to cross a hybrid with one of its parents and then to cross the resulting progeny with the same parent Line (perhaps multiple times) in order to develop progeny with a genetic makeup that approximates the genetic make up of that parent while retaining certain desirable characteristics of the genetic makeup of the other parent of the hybrid.

3. ''Breed'' means to purposefully modify the Germplasm of a plant so as to alter its genetic make up, and to develop the progeny from the altered Germplasm.

4. ''DPL Marker Data'' means Fingerprints that Defendant Monsanto shall create for the DPL Germplasm being divested pursuant to Schedule B.2.

5. ''Donor Lines'' means the cotton Lines used by Defendant Monsanto to create or transmit novel cotton traits or events, and identified in Schedule F.

6. ''Fingerprint'' means a record of the presence or absence of genetic markers for which a Line has been tested.

7. ''Germplasm'' means a collection of heterozygous and homozygous cotton plants or parts thereof. For purposes of Schedules B and C of this Final Judgment, when the Defendants are required to convey Germplasm to a party, the Defendant may satisfy that obligation by conveying that Germplasm in seed form, or if necessary, in potted plant form.

8. ''Introgress'' means to move a gene from one cotton plant into another.

9. ''Line'' means a set of cottonseed or plants that share a common reasonably homogenous genotype that originate from a cross between two cotton plants.

10. ''MAB Populations'' means the Germplasm populations for which Defendant Monsanto has conducted significant marker analyses that are identified in Schedule E.

11. ''Monsanto B.t. Gene'' means a DNA molecule, or a replicate thereof, developed and out-licensed by Defendant Monsanto for use in commercial cottonseed in the United States, and which encodes a B.t. toxin that when present in cotton plants results in those plants being toxic to lepidopteran insects.

12. ''Monsanto Cotton Traits'' means: (1) The transgenic event denominated ''Event 531'' currently sold under the ''Bollgard'' brand; (2) the transgenic event denominated ''Event 15985'' currently sold under the ''Bollgard II'' brand; (3) the transgenic event denominated ''Event 1445'' currently sold under the ''Roundup Ready'' brand; and (4) the transgenic event denominated ''Event 88913'' currently sold under the ''Roundup Ready Flex'' brand, or any combination thereof.

13. ''Monsanto Marker Library'' means (1) Two collections of genetic information concerning variations in the genetic makeup of *Gossypium*, specifically a set of SSRs and a set of SNPs, and (2) cotton mapping data owned by Defendant Monsanto prior to its acquisition of Defendant DPL pursuant to the Merger Agreement.

14. ''Monsanto Roundup Ready Gene'' means a DNA molecule, or a replicate thereof, developed and out-licensed by Defendant Monsanto for use in commercial cottonseed in the United States, and which when present in cotton plants results in those plants exhibiting commercial tolerance to glyphosate herbicides.

15. ''Null Line'' shall mean a reasonably genetically homogenous Line of cotton that is selected from a cross in which one of the parents was from the Advanced Exotic Yield Lines or MAB populations and that does not contain one or more of the Monsanto Cotton Traits that was contained in the parental Advanced Exotic Yield Line or MAB population. A grant of a right to create a Null Line to the Acquirer of the Enhanced Stoneville Assets includes an obligation by Defendant Monsanto to provide the Acquirer of the Enhanced Stoneville Assets with assays, materials, and information regarding the Monsanto Cotton Trait(s) formerly in the Null Line necessary to obtain requisite regulatory

approvals, provided the Acquirer of the Enhanced Stoneville Assets reimburses Defendant Monsanto its reasonable expenses in providing such assistance.

16. ''Publicly Available Cotton Germplasm'' means any non-Monsanto proprietary cotton Germplasm that has not been exclusively in-licensed by Defendant Monsanto.

17. ''Recurrent Parent'' means the parent to which successive Backcrosses are made in Backcross Breeding.

18. ''Roundup Ready Flex'' means the Monsanto Roundup Ready Gene denominated ''Event 88913.''

19. ''SNP'' (or Single Nucleotide Polymorphisms) means variations at a single position in a given DNA sequence, which occur within a population of cotton plants.

20. ''SSR'' (or Simple Sequence Repeat) means variations in the number of repetitions of a DNA sequence.

21. ''Transform'' means to alter the genetic makeup of a cotton plant variety through means other than Breeding, for example, by the introduction of foreign genetic material.

Schedule A—Stoneville

1. *Cotton Germplasm:* All U.S. Stoneville cotton Germplasm, including, for each variety, Line and population to be divested: all patents, patent applications and Plant Variety Protection Act certificates applied for or granted with respect to that Germplasm (and excluding any patents or patent applications on Monsanto cotton traits); and copies of all performance and other test results, phenotypic data, product descriptions, research data and any Fingerprint information.

2. *Physical Assets:*

a. Defendant Monsanto's interest in the real property at the following sites or locations:

(1) The manufacturing, storage and delinting facility at Stoneville, Mississippi;

(2) The research & development facility at Arcola, Mississippi;

(3) The research & development facility, including greenhouse and labs, at Memphis, Tennessee; and

(4) The manufacturing, storage and delinting and the Breeding and testing facilities at N. Powerline Road, Maricopa, Arizona.

b. Defendant Monsanto's interest in the leased real property at the following sites or locations:

(1) The land at Maricopa, Arizona;

(2) The AgriCenter international research facility at Memphis, Tennessee;

(3) The Memphis Redbirds Suite;

(4) The Columbus & Greenville Railway Lease;

(5) The delinting plant at Marble Hall, South Africa;

(6) The property described in the W.B. Sutton Farms Partnership Lease;

(7) The storage facility described in the Farmers Feed Storage Agreement;

(8) The storage facility described in the David Storage Company Industrial Space Lease; and

(9) The storage facility described in the Cascio Refrigerated Warehouse Agreement.

c. At the option of the Acquirer of the Enhanced Stoneville Assets, Defendant Monsanto's interest in the real property at the following sites or locations:

(1) The farm at Lubbock, Texas;

(2) The manufacturing, storage, and delinting facility at Big Spring, Texas;

(3) The research and development facility at Idalou, Texas;

(4) 7.2 acres in Idalou, Texas (leased); and

(5) 80 acres in Idalou, Texas (leased).

d. All tangible assets other than Germplasm located at each of the locations identified in a. and b. above that are exclusively or primarily used in connection with the Stoneville U.S. branded business, including:

(1) All manufacturing and agricultural equipment, tooling and fixed assets; personal property; materials; supplies; and other tangible property.

(2) All existing drawings; blueprints; designs; plans for improvements or expansion; design protocols; specifications for materials; and specifications for parts and devices.

(3) All safety procedures for the handling of materials and substances; and quality assurance and control procedures relating to the locations listed in a. and b. above or the tangible assets listed in this paragraph d.

(4) Business records relating to the Stoneville U.S. branded cottonseed business, including stock record books, minute books, direct customer or direct distributor lists; a list of names and addresses of U.S. cotton growers with Monsanto trait licenses; and other information to the extent related to the operation of the business during the past three years which is in the possession of or available to the Defendants.

e. At the option of the Acquirer of the Enhanced Stoneville Assets, all tangible assets other than Germplasm located at each of the locations identified in c. above that are exclusively or primarily used in connection with the Stoneville U.S. branded business, including:

(1) All manufacturing and agricultural equipment, tooling and fixed assets; personal property; materials; supplies; and other tangible property.

(2) All existing drawings; blueprints; designs; plans for improvements or expansion; design protocols; specifications for materials; and specifications for parts and devices.

(3) All safety procedures for the handling of materials and substances; and quality assurance and control procedures relating to the locations listed in c. above or the tangible assets listed in this paragraph e.

(4) Business records relating to the Stoneville U.S. branded cottonseed business, including stock record books, minute books, direct customer or direct distributor lists; a list of names and addresses of U.S. cotton growers with Monsanto trait licenses; and other information to the extent related to the operation of the business during the past three years which is in the possession of or available to the Defendants.

f. At the option of the Acquirer of the Enhanced Stoneville Assets, all equipment used exclusively or primarily in connection with the Stoneville branded cottonseed business stored at Monsanto sites at Leesburg, Georgia, Mt. Olive, North Carolina and Leland, Mississippi.

3. *Intangible Assets:*

a. *Brand Names, Goodwill and Trade Secrets*—The Stoneville brand names, goodwill, and trade secrets relating to Stoneville's U.S. branded cottonseed business. Defendant Monsanto may retain exclusive rights to the Stoneville brand in connection with the sale of Germplasm in Spain, Greece, and Turkey, such rights expire on a country-by-country basis with the term of the relevant current distributor agreements in Spain and Greece, and one (1) year from the date of divestiture of the Enhanced Stoneville Assets in Turkey, provided that in all cases the relevant distributors shall be allowed to sell any inventory of goods already packaged in containers bearing the Stoneville trademarks as of the relevant termination date.

b. *Intangible and Contractual Rights:*

(1) Exclusive rights to (a) Breeder records and/or notebooks, including pedigrees, relating to Stoneville U.S. cotton Germplasm, identities of non-public lines of Stoneville U.S. cotton Germplasm in breeding and trial results, including yield results (subject to the redaction of any data that may be included in such records relating to the identity of any non-public lines other than Stoneville U.S. cotton Germplasm), (b) existing fingerprints for Stoneville U.S. cotton Germplasm, and (c) quality control data relating to Stoneville U.S. cotton Germplasm (subject to Defendant Monsanto's right to keep under the control of its Law Department (i) one copy of such quality control data and (ii) access to the identities of any

Stoneville U.S. cotton Germplasm present in trial results that also include results relating to non-public lines of Germplasm other than Stoneville U.S. cotton Germplasm; Monsanto's Law Department may not disclose this information to any other component of Monsanto).

(2) Non-exclusive rights to, and the tangible embodiments of, (i) Non-proprietary procedures, methods, techniques, know-how, specifications, processes, analyses, and protocols used in Stoneville's U.S. branded cottonseed business (such as Monsanto's procedures for the inspection, sampling and delivery of cottonseed at production facilities, procedures for analyzing job safety and complying with environmental regulations, and specifications for production-related data entry), and (ii) Monsanto's low acid delinting process.

(3) All assignable licenses, permits, and authorizations issued by any governmental organization relating to the Stoneville U.S. branded cottonseed business.

(4) All contracts to which Stoneville Pedigreed Seed Company is a party, including supply and distribution agreements.

(5) All other intangible and contractual rights used exclusively or primarily in Stoneville's U.S. branded cottonseed business not otherwise specifically addressed in b.(1)–(4).

4. *Exclusions:*

Excluded from the assets to be divested that are listed in this Schedule A are: (1) Real property not specifically identified in Schedule A.2., and (2) software owned by or licensed to Defendant Monsanto (except that Stoneville will receive a non-exclusive license to TaqPro), and hardware used exclusively to access such software.

Schedule B—Enhanced Stoneville Assets

1. *Stoneville:* As defined in the Final Judgment.

2. *DPL Germplasm:* Defendants shall divest all interests in the DPL varieties listed in Table B, including, for each variety, any Plant Variety Protection Act certificates applied for or granted, patents applied for or granted, copies of all performance and other test results, phenotypic data, product descriptions, research data and DPL Marker Data.

a. With respect to this DPL Germplasm, Defendant Monsanto may:

(1) Continue to sell during 2007 any existing inventories of these DPL varieties that Defendant DPL currently offers for sale in the United States;

(2) Take back an exclusive license to commercialize varieties that (i) Contain only traits out-licensed by Defendant Monsanto, and (ii) are essentially derived from these DPL varieties, or are essentially derived from a cross between any of these DPL varieties, which license may require the Acquirer of the Enhanced Stoneville Assets to seek U.S. patents for the DPL varieties listed in Table B, and may provide for enforcement of Monsanto's exclusive rights with respect to these varieties;

(3) Retain exclusive rights (i) To continue to sell these DPL varieties in countries outside the United States in which Defendant DPL currently offers the varieties for sale, but such rights shall terminate with respect to a particular country and variety if Defendant Monsanto discontinues sales of that variety in that country, and (ii) to sell 05X460, 05Y063, and 05Z629 outside of the United States;

(4) Retain sufficient quantities of cottonseed to enable it to continue its current sales of seed relating to sales made pursuant to subparagraph 3 above (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets);

(5) Retain sufficient quantities of cottonseed for Breeding purposes (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets), and take back a non-exclusive license to use these DPL varieties in its Breeding program;

(6) Take back a license that grants Defendant Monsanto only those rights necessary to accomplish the divestiture of the VipCot Assets described in Schedule C; and

(7) Require the Acquirer of the Enhanced Stoneville Assets to agree that for seven (7) years after the divestiture of the Enhanced Stoneville Assets it shall not commercialize a variety that is essentially derived from one of the DPL varieties listed in Table B, if that variety contains a Monsanto glyphosate tolerance trait, a Monsanto insect resistance trait, and any non-glyphosate herbicide tolerance trait commercialized in cottonseed in the United States as of the date of the filing of this Final Judgment.

b. Defendants' divestiture of the DPL varieties 00W12, 02T15, 02Z55, 03Y047, 03Y056, 03Y062, 04T048, 04W019, 04Y341, 05X460, 05Y063, 05Z629, 25105N, and DP491 to the Acquirer of the Enhanced Stoneville Assets is subject to the license to Syngenta described in Schedule C.2.

3. *Syngenta Germplasm:* Defendants shall divest all interests in the conventional Germplasm originating from the United States cotton Breeding program purchased by Defendant DPL from Syngenta pursuant to an agreement dated May 15, 2006, along with any conventional progeny of that material.

4. *Advanced Exotic Yield Lines:* Defendants shall divest exclusive rights to commercialize, and non-exclusive rights to Breed with, the Advanced Exotic Yield Lines set forth in Schedule D, including the right, subject to reasonable indemnification requirements, to create Null Lines (other than a Null Line that contains only one of the B.t. Genes of Bollgard II). In connection with this divestiture:

a. Defendants shall divest copies of all performance and other test results, phenotypic data, product descriptions, research data and Fingerprint information for those populations and Lines, excluding data regarding the presence or function of any genetic material from *Gossypium barbadense* present in the Lines.

b. Defendants may not assert against the Acquirer of the Enhanced Stoneville Assets any rights Defendants may have or acquire with respect to (1) The Germplasm used in the Advanced Exotic Yield Lines, and (2) any non-transgenic yield trait contained in those Lines.

c. Defendants may retain research quantities of the Advanced Exotic Yield Lines to enable them to continue their trait development research (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets); and

d. Defendants may (1) Prohibit the Acquirer of the Enhanced Stoneville Assets from conveying Lines from the Advanced Exotic Yield Lines or their progeny to third parties, other than for contract production work or for distribution to growers as commercial seed, and (2) require the Acquirer of the Enhanced Stoneville Assets to seek U.S. patents and enforce Breeding and resale restrictions on any varieties that are commercialized from the Advanced Exotic Yield Lines. Defendants shall lose the ability to require these terms (4.d.1 & 2) if Defendants have not licensed to a third party a non-transgenic cotton yield trait contained in one or more of the Advanced Exotic Yield Lines within five (5) years of the date of this Final Judgment.

5. *MAB Populations:* Defendants shall divest the MAB Populations set forth in Schedule E, including copies of all performance and other test results,

phenotypic data, product descriptions, research data and Fingerprint information, and the right, subject to reasonable indemnification requirements, to create Null Lines (other than a Null Line that contains only one of the B.t. genes of Bollgard II).

6. *Cotton States Germplasm:* Defendant Monsanto shall grant the Acquirer of the Enhanced Stoneville Assets a non-exclusive, royalty-free license to sell under the Stoneville and NexGen brand names and Breed with the four (4) Cotton States varieties currently being sold by Stoneville. Defendant Monsanto shall relinquish evaluation rights to the Acquirer of the Enhanced Stoneville Assets for material comprised of Germplasm from pre-existing Breeding crosses between Cotton States' in-licensed Lines and any Lines being transferred exclusively to Stoneville pursuant to this Final Judgment.

a. In connection with its divestiture of this Cotton States Germplasm, Defendant Monsanto may retain exclusive rights to Germplasm already in-licensed to or commercialized through Cotton States at the date of this Final Judgment, or Germplasm from pre-existing Breeding crosses between two Cotton States' in-licensed Lines or between one of those Lines and a public variety, except that Defendant Monsanto may only retain non-exclusive rights to the Stoneville variety designated STX0502 which has been commercialized solely through Cotton States. Defendant Monsanto may only commercialize the Stoneville variety designated STX0502 to licensees other than Defendant DPL.

7. *Other Monsanto Germplasm:* Defendants shall divest all cotton Germplasm in the United States held by Defendant Monsanto prior to its acquisition of Defendant DPL and not otherwise addressed in Schedules A and B, subject to the following exceptions:

a. Any Publicly Available Cotton Germplasm, provided that if the Acquirer of the Enhanced Stoneville Assets does not otherwise possess the Germplasm and cannot otherwise reasonably obtain it, Defendant Monsanto must, if the Acquirer of the Enhanced Stoneville Assets requests, provide the Acquirer of the Enhanced Stoneville Assets with sufficient quantities for use in a Breeding program;

b. Exclusive rights to (1) The Donor Lines for Defendant Monsanto's commercialized transgenic traits, (2) Germplasm Transformed or Introgressed with cotton transgenic traits other than Monsanto's Cotton Traits, (3) any Germplasm containing experimental transgenic events, and (4) Germplasm used in Monsanto's non-transgenic trait research and development program, with the exception of the Advanced Exotic Yield Lines, as addressed above; and

c. Rights to any third party Germplasm held in connection with the provision of trait Introgression services to third parties.

8. *Monsanto Marker Library:* Defendants shall provide access to the information in, and a non-exclusive, royalty-free license to use, Monsanto's Marker Library.

9. *Licenses:* Defendants shall grant licenses to the Acquirer of the Enhanced Stoneville Assets to develop, produce, have produced, and sell under the Stoneville and NexGen brands cottonseed containing Monsanto's Cotton Traits for use in the United States. Such licenses shall be based on commercially reasonable terms, and in particular shall provide that the licensee:

a. Shall be entitled to a proportion of the net license revenue for those traits at least as great as the net license revenue Defendant DPL is entitled to under its current licenses for those traits;

b. May, subject to reasonable regulatory and stewardship conditions, Breed into and sell cottonseed containing Monsanto Cotton Traits, non-Monsanto genes not naturally occurring in cotton;

c. Shall have an option to license future Monsanto B.t. Genes on the same terms as those used in the current DPL licenses. Defendants may terminate this option at such time as the Acquirer of the Enhanced Stoneville Assets' total annual sales of cottonseed containing a non-Monsanto B.t. Gene being marketed by the Acquirer of the Enhanced Stoneville Assets as conferring lepidopteran resistance under the Stoneville and NexGen brands, exceed 60% of the Acquirer of the Enhanced Stoneville Assets' annual sales of cottonseed that is marketed as lepidopteran resistant under the Stoneville and NexGen brands; and

d. Shall have an option to license future Monsanto Roundup Ready Genes on the same terms as those used in the current DPL licenses. Defendants may terminate this option at such time as the Acquirer of the Enhanced Stoneville Assets' total annual sales of cottonseed containing a non-Monsanto glyphosate tolerance gene being marketed by the Acquirer of the Enhanced Stoneville Assets as conferring glyphosate tolerance under the Stoneville and NexGen brands, exceed 60% of the Acquirer of the Enhanced Stoneville Assets' annual sales of cottonseed that is marketed as glyphosate tolerant under the Stoneville and NexGen brands. Defendants need not grant an option to any non-glyphosate herbicide tolerance trait stacked with any such glyphosate tolerance gene.

TABLE B.—DPL GERMPLASM

00W12 (DP393):
02T15
02Z55
03Y047
03Y056
03Y062
04T048
04W019
04Y341
05X460
05Y063
05Z629
Delta Pearl
DP 5690
DP 491
DP2156
DP565
DP5305
DP5415
AZ2099

Schedule C—The VipCot Assets

1. All DPL Germplasm identified in Table C containing only a Syngenta trait; and, provided that Syngenta has obtained a license (identified in Section C.4. below) to the Roundup Ready Flex trait, all DPL Germplasm Lines identified in Table C containing a Syngenta trait and the Roundup Ready Flex trait. The Germplasm Lines identified in Table C shall be conveyed along with:

a. Exclusive rights to commercialize varieties developed from the traited DPL Germplasm Lines identified in Table C, provided that any varieties commercialized from this Germplasm include, in addition to any other traits, the Cry67B event, Cry69D event, Cry02A event, or the Cot102 event;

b. Exclusive rights to Breed with the traited DPL Germplasm Lines identified in Table C, provided that any varieties commercialized from such Breeding include, in addition to any other traits, either the Cry67B event, Cry69D event, Cry02A event, or the Cot102 event;

c. Reports that provide all performance and other test results, phenotypic data, product descriptions, purity information, breeding histories, pedigrees and statuses for the Germplasm that is conveyed;

d. At Syngenta's request, Fingerprint information regarding the Recurrent Parents of each of the DPL Germplasm Lines listed in Table C sufficient to allow Syngenta to reasonably perform Backcrossing with this Germplasm

(subject to reasonable compensation from Syngenta for such services), if Syngenta does not possess, cannot reasonably develop itself or contract for, the capability to develop this Fingerprint information; and

e. An exclusive license to commercialize varieties that contain the Cry67B event, Cry69D event, Cry02A event, or Cot102 event that are essentially derived from the Recurrent Parent Lines identified in Table C that are not otherwise being divested pursuant to Schedule B, which license shall require Monsanto to seek U.S. patents for those Recurrent Parent Lines and provide for enforcement of Syngenta's exclusive rights with respect to those lines.

2. Breeding quantities of the Recurrent Parents of each of the DPL Germplasm Lines identified in Table C, subject to a license to Syngenta (a) Permitting use of the Recurrent Parents only for crossing or Backcrossing between a Line and its relevant Recurrent Parent; (b) requiring that the Recurrent Parent Germplasm be returned or destroyed no later than December 31, 2014; and (c) prohibiting transfer of the Recurrent Parent Germplasm to any third party other than with an exclusive license to the relevant Line derived from that Recurrent Parent, with the same limitations on use of the Recurrent Parent Germplasm.

3. A non-exclusive royalty-free license to a PCR assay and/or an ELISA assay to enable detection of Monsanto's Roundup Ready Flex trait.

4. A non-exclusive license to (a) Develop, produce, and sell cottonseed containing the Roundup Ready Flex trait under the standard commercial terms offered by Defendant Monsanto, including changes required by this Decree to the standard license, and (b) transfer such cottonseed to a third party with a commercial Roundup Ready Flex license.

5. Defendant DPL's interest in Germplasm populations Introgressed with the Cry67B event, Cry69D event, Cry02A event, and/or the Cot102 in the U.S. cotton Breeding program that Defendant DPL purchased from Syngenta pursuant to an agreement dated May 15, 2006, along with any progeny of that material.

6. Defendant Monsanto may condition the divestitures on Syngenta's acknowledgment that Defendant Monsanto is not conveying to Syngenta any rights not held by Defendant DPL prior to Defendant Monsanto's acquisition of Defendant DPL.

7. Defendants acknowledge that nothing in this Final Judgment relating to the divestiture of the VipCot Assets shall, in and of itself, modify, alter, terminate or otherwise affect any rights and obligations in any contract between Syngenta and either of the Defendants in effect as of the date of the filing of the Complaint in this matter.

TABLE C—VIPCOT GERMPLASM

[V1 = Cot102; C1 = Cry67B; C2 = Cry69D, C3 =Cry02A; RF = Roundup Ready Flex]

Recurrent parent	V1C1RF	V1C1	C1	V1	C1RF	V1RF	C2	C3	C2V1RF	C3V1RF	C2V1	C3V1
00H29	X		X				X	X	X	X		
00S07		X	X	X	X		X	X				
00W12	X	X	X	X		X	X	X	X	X	X	
01W34		X		X		X						
02T15		X	X	X			X	X			X	X
02Z55		X	X	X		X	X	X				
02Z89		X										
03H070		X	X	X			X	X				
03Q066		X	X	X			X	X				
03Y047		X	X	X			X	X				
03Y056		X	X	X	X		X	X				
03Y062		X	X	X			X	X				
04P011		X		X								
04P024		X		X								
04Q035		X		X								
04T042		X		X								
04T048		X	X	X			X	X				
04T056		X		X								
04T067		X		X								
04V073		X	X	X	X		X	X				
04W019		X	X	X			X	X			X	
04Y288		X		X							X	
04Y341		X	X	X	X		X	X				
04Z007		X										
04Z353		X		X								
05H210		X										
05H229		X		X								
05H270		X		X								
05H284		X	X	X			X	X				
05Q153		X	X				X	X				
05T103		X		X								
05V341		X		X								
05X460		X	X	X			X	X				
05Y063		X										
05Y067		X										
05Y070		X										
05Z629		X	X	X			X	X				
05Z855		X		X								
25105N		X	X									
DP491	X		X	X	X	X	X	X	X	X	X	X
DP6207		X	X				X	X				
SG747		X	X	X			X	X			X	X
UA–4		X										

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

MCS0719B2RF	60066403610	60066410398
MSC0720B2RF	60066403634	60066410475
MCS0721B2RF	60066404080	60066410502
MCS0722B2RF	60066404181	60066410552
MCS0723B2RF	60066404294	60066410588
MCS0724B2RF	60066404395	60066411326
MCS0725B2RF	60066404434	60066411883
MCS0726B2RF	60066404446	60066412001
MCS0727B2RF	60066404559	60066412164
MCS0728B2RF	60066404840	60066412380
MCS0729RF	60066405082	60066414586
MCS0730RF	60066404207	60066414649
MCS0731RF	60066405676	60066406666
MCS0732RF	60066405703	60066406767
MCS0733RF	60066406399	60066407644
MCS0734RF	60066406515	60066416821
MCS0735RF	60066407442	60066409686
MCS0736RF	60066415021	60066409701
MCS0737RF	60066415122	60066410146
MCS0738RF	60066415285	60067807314
MCS0739RF	60066407846	60067807720
MCS0740RF	60066416124	60067808924
60066412443	60066408519	60067809433
60066412455	60066408608	60067809774
60066412532	60066408747	60067810082
60066412683	60066409129	60067810208
60066412859	60066409131	60067810347
60066403254	60066409220	60067810501
60066403367	60066409585	60067811325
60066403418	60066410350	60067811642
60067812303	1000000021895669432700000	1000000021896514847100000
60067812620	1000000021895702200700000	1000000021896521400700000
60067813494	1000000021895708754300000	1000000021896547615100000
60067813646	1000000021895734968700000	1000000021896580383100000
60067814903	1000000021895754629500000	1000000021896593490300000
60067815638	1000000021895761183100000	1000000021896613151100000
60067815791	1000000021895807058300000	1000000021896645919100000
60067816147	1000000021895813611900000	1000000021896652472700000
60067817050	1000000021895866040700000	1000000021896698347900000
60067818115	1000000021895872594300000	1000000021896783544700000
60067818571	1000000021895911915900000	1000000021896790098300000
60067819193	1000000021895931576700000	1000000021896809759100000
60067806259	1000000021895977451900000	1000000021896822866300000
60067806297	1000000021895984005500000	1000000021896822866300000
60067809534	1000000021896003666300000	1000000021896835973500000
60067809661	1000000021896016773500000	1000000021896849080700000
60067810676	1000000021896049541500000	1000000021896868741500000
60067810878	1000000021896082309500000	1000000021896967045500000
60067810979	1000000021896147845500000	1000000021896993259900000
60067810993	1000000021896154399100000	1000000021897006367100000
60067811185	1000000021896160952700000	1000000021897098117500000
60067813228	1000000021896187167100000	1000000021897124331900000
60067813444	1000000021896206827900000	1000000021897143992700000
60067814268	1000000021896213381500000	1000000021897170207100000
60067815296	1000000021896239595900000	1000000021897189867900000
60067815981	1000000021896246149500000	1000000021897196421500000
60067816058	1000000021896298578300000	1000000021897202975100000
60067816692	1000000021896311685500000	1000000021897222635900000
60067818711	1000000021896377221500000	1000000021897255403900000
60067819371	1000000021896383775100000	1000000021897261957500000
1000000021895623557500000	1000000021896423096700000	1000000021897307832700000
1000000021895643218300000	1000000021896495186300000	1000000021897314386300000
1000000021897347154300000	1000000021898199122300000	1000000021899149394300000
1000000021897366815100000	1000000021898251551100000	1000000021899169055100000
1000000021897386475900000	1000000021898290872700000	1000000021899175608700000
1000000021897399583100000	1000000021898343301500000	1000000021899234591100000
1000000021897484779900000	1000000021898369515900000	1000000021899264800550000
1000000021897510994300000	1000000021898376069500000	1000000021899300127100000
1000000021897537208700000	1000000021898395730300000	1000000021899326341500000
1000000021897576530300000	1000000021898435051900000	1000000021899335910950000
1000000021897589631500000	1000000021898448159100000	1000000021899365663100000
1000000021897661725100000	1000000021898474373500000	1000000021899385323900000

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES—Continued

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

1000000021897694495100000	1000000021898533335900000	1000000021899431199100000
1000000021897720709500000	1000000021898539909500000	1000000021899450859900000
1000000021897733816700000	1000000021898559570300000	1000000021899477074300000
1000000021897760031100000	1000000021898572677500000	1000000021899490181500000
1000000021897786245500000	1000000021898625106300000	1000000021899522949500000
1000000021897819013500000	1000000021898651320700000	1000000021899542614500000
1000000021897845227900000	1000000021898670981500000	1000000021899588485500000
1000000021897871442300000	1000000021898703749500000	1000000021899601592700000
1000000021897904210300000	1000000021898762731900000	1000000021899627807100000
1000000021897923871100000	1000000021898769285500000	1000000021899706450300000
1000000021897943535100000	1000000021898808604230000	1000000021899765432700000
1000000021897985353500000	1000000021898854482300000	1000000021899798200700000
1000000021897989407100000	1000000021898874143100000	1000000021899837522300000
1000000021898002514300000	1000000021898887250300000	1000000021900014469500000
1000000021898015621500000	1000000021898913464700000	1000000021900053791100000
1000000021898035282300000	1000000021898946232700000	1000000021900093112700000
1000000021898054943100000	1000000021898972447100000	1000000021900152095100000
1000000021898061496700000	1000000021898979000700000	1000000021900191416700000
1000000021898087711100000	1000000021898992107900000	1000000021900204523900000
1000000021898120479100000	1000000021899011768700000	1000000021900217631100000
1000000021898159800700000	1000000021899129733500000	1000000021900276613500000
1000000021898166354300000	1000000021899142840700000	1000000021900296274300000
1000000021900366836300000	1000000021901449707900000	1000000021902642463100000
1000000021900381471100000	1000000021901502136700000	1000000021902683383300000
1000000021900388024700000	1000000021901508690300000	1000000021902701445500000
1000000021900401131900000	1000000021901528351100000	1000000021902701445500000
1000000021900486328700000	1000000021901611787900000	1000000021902753875400000
1000000021900545311100000	1000000021901621627900000	1000000021902793025500000
1000000021900558415800000	1000000021901677385900000	1000000021902793025500000
1000000021900597739900000	1000000021901718405500000	1000000021902799749700000
1000000021900610841710000	1000000021901751173500000	1000000021902812857000000
1000000021900656722300000	1000000021901777387900000	1000000021902865285500000
1000000021900663275900000	1000000021901816709500000	1000000021902930821500000
1000000021900675026300000	1000000021901875691900000	1000000021902983250300000
1000000021900761579900000	1000000021901901906300000	1000000021902986803900000
1000000021900820562300000	1000000021901921928700000	1000000021903023422700000
1000000021900864375000000	1000000021901934674300000	1000000021903081554300000
1000000021900899205500000	1000000021901960888700000	1000000021903120875900000
1000000021900970951100000	1000000021901967447300000	1000000021903166751100000
1000000021900997509500000	1000000021902124728700000	1000000021903192965500000
1000000021901017170300000	1000000021902131282300000	1000000021903206072700000
1000000021901049938300000	1000000021902157496700000	1000000021903251947900000
1000000021901102367100000	1000000021902203371900000	1000000021903278162300000
1000000021901108920700000	1000000021902233613990000	1000000021903284715900000
1000000021901135135100000	1000000021902255800700000	1000000021903304376700000
1000000021901154795900000	1000000021902327890300000	1000000021903310930300000
1000000021901181010300000	1000000021902340997500000	1000000021903369912700000
1000000021901233439100000	1000000021902386872700000	1000000021903383019900000
1000000021901239992700000	1000000021902399799900000	1000000021903396127100000
1000000021901272760700000	1000000021902458962300000	1000000021903402680700000
1000000021901279314300000	1000000021902472069500000	1000000021903457931900000
1000000021901331743100000	1000000021902563819900000	1000000021903664823100000
1000000021901371064700000	1000000021902572697100000	1000000021903677799300000
1000000021903710699900000	1000000021904601989500000	1000000021905473618300000
1000000021903776235900000	1000000021904634757500000	1000000021905480171900000
1000000021903782789500000	1000000021904700293500000	1000000021905539154300000
1000000021903808903900000	1000000021904713400700000	1000000021905578475900000
1000000021903848325500000	1000000021904719954300000	1000000021905617797500000
1000000021903854879100000	1000000021904746168700000	1000000021905630904700000
1000000021903874539900000	1000000021904785490300000	1000000021905657115900000
1000000021903881093500000	1000000021904818258300000	1000000021905670226300000
1000000021903933522300000	1000000021904824811900000	1000000021905709547900000
1000000021903940075900000	1000000021904864133500000	1000000021905716101500000
1000000021903966290300000	1000000021904896901500000	1000000021905768530300000
1000000021903985951100000	1000000021904916456300000	1000000021905820951000000
1000000021903995058300000	1000000021904936230300000	1000000021905837483500000
1000000021904018719100000	1000000021904949330300000	1000000021905845961990000
1000000021904032636900000	1000000021905001759100000	1000000021905846179900000
1000000021904064594300000	1000000021905014866300000	1000000021905847173500000
1000000021904070711479000	1000000021905034527100000	1000000021905925816700000
1000000021904090808700000	1000000021905080402300000	1000000021905938923900000
1000000021904117023100000	1000000021905113170300000	1000000021905978245500000

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES—Continued

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

1000000021904149791100000	1000000021905132831100000	1000000021905984799100000
1000000021904156344700000	1000000021905145938300000	1000000021906024120700000
1000000021904221880700000	1000000021905204920700000	1000000021906030674300000
1000000021904313631100000	1000000021905224581500000	1000000021906037227900000
1000000021904326738300000	1000000021905237688700000	1000000021906122424700000
1000000021904333291900000	1000000021905244242300000	1000000021906201067900000
1000000021904339845500000	1000000021905250795900000	1000000021906207621500000
1000000021904359506300000	1000000021905270456700000	1000000021906220728700000
1000000021904398827900000	1000000021905335992700000	1000000021906233835900000
1000000021904497131900000	1000000021905362207100000	1000000021906273157500000
1000000021904510239100000	1000000021905381867900000	1000000021906279711100000
1000000021904543007100000	1000000021905401528700000	1000000021906292818300000
1000000021904556114300000	1000000021905453957500000	1000000021906319032700000
1000000021906332139900000	1000000021907177554300000	1000000021908016415100000
1000000021906371461500000	1000000021907197215100000	1000000021908029529500000
1000000021906384568700000	1000000021907256197500000	1000000021908042629500000
1000000021906430443900000	1000000021907262751100000	1000000021908055736700000
1000000021906469765500000	1000000021907282411900000	1000000021908127826300000
1000000021906495979900000	1000000021907295519100000	1000000021908186808700000
1000000021906502533500000	1000000021907308626300000	1000000021908219576700000
1000000021906535301500000	1000000021907341394300000	1000000021908232683900000
1000000021906541855100000	1000000021907347947900000	1000000021908239237500000
1000000021906548408700000	1000000021907400376700000	1000000021908245791100000
1000000021906554962300000	1000000021907446251900000	1000000021908252344700000
1000000021906561515900000	1000000021907459359100000	1000000021908265451900000
1000000021906568069500000	1000000021907479019900000	1000000021908298219900000
1000000021906587730300000	1000000021907498680700000	1000000021908330987900000
1000000021906594283900000	1000000021907511787900000	1000000021908376863100000
1000000021906640159100000	1000000021907524895100000	1000000021908409631100000
1000000021906653266300000	1000000021907570770300000	1000000021908416184700000
1000000021906705695100000	1000000021907590431100000	1000000021908475167100000
1000000021906751570300000	1000000021907610091900000	1000000021908481720700000
1000000021906764677500000	1000000021907623199100000	1000000021908494827900000
1000000021906777784700000	1000000021907636306300000	1000000021908540703100000
1000000021906784338300000	1000000021907642859900000	1000000021908547256700000
1000000021906790891900000	1000000021907649413500000	1000000021908560363900000
1000000021906810552700000	1000000021907695288700000	1000000021908566917500000
1000000021906823659900000	1000000021907741163900000	1000000021908580025900000
1000000021906882642300000	1000000021907806699900000	1000000021908593131900000
1000000021906896957495000	1000000021907826360700000	1000000021908599685500000
1000000021906961285500000	1000000021907852572100000	1000000021908612792700000
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1000000021907039928700000	1000000021907898450300000	1000000021908658667900000
1000000021907066143100000	1000000021907937771900000	1000000021908665221500000
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1000000021908717650300000	1000000021909130527100000	1000000021909595832700000
1000000021908730750300000	1000000021909143634300000	1000000021909635154300000
1000000021908737311100000	1000000021909156741500000	1000000021909661368700000
1000000021908763525500000	1000000021909176402300000	1000000021909667922300000
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1000000021908783186300000	1000000021909229171100000	1000000021909759672700000
1000000021908789739900000	1000000021909231835400000	1000000021909785887100000
1000000021908802847100000	1000000021909294367100000	1000000021909814655100000
1000000021908842168700000	1000000021909327135100000	ICA0000000033473677889 89
1000000021908848722300000	1000000021909333687700000	ICA0000000033474731053 41
1000000021908874932300000	1000000021909346795900000	ICA0000000033476832792 93
1000000021909038776700000	1000000021909373010300000	ICA0000000033481031684 45
1000000021909058437500000	1000000021909451653500000	P0000000000012371034156 5
1000000021909091205500000	1000000021909530296700000	P0000000000012371046694 1
P0000000000012371388050 9	P0000000000012371466694 1	P0000000000012371499462 1
P0000000000012371709177 3	P0000000000012371741945 3	P0000000000012371794374 1
P0000000000012371879570 9	P0000000000012372063071 7	P0000000000012372266233 3
P0000000000012372449734 1	P0000000000012372685663 7	P0000000000012372718431 7
60044331500	60035225831	60035225879
60035225881	60035225906	60035225920
60043573686		

SCHEDULE E.—MAB POPULATIONS

[The Lines identified by the following code numbers in Defendant Monsanto's Breeding database]

L0001	L0025	L0049	L0235	L0271	L0310	L0334	L0357	L0380	L0404
L0002	L0027	L0050	L0236	L0282	L0311	L0335	L0358	L0381	L0406
L0003	L0028	L0051	L0237	L0283	L0312	L0336	L0359	L0382	L0407
L0004	L0029	L0052	L0238	L0284	L0313	L0337	L0360	L0383	L0408
L0005	L0030	L0053	L0239	L0290	L0314	L0338	L0361	L0384	L0409
L0006	L0031	L0054	L0240	L0291	L0315	L0339	L0362	L0385	L0410
L0007	L0032	L0055	L0241	L0292	L0317	L0340	L0363	L0386	L0411
L0008	L0033	L0056	L0242	L0293	L0318	L0341	L0364	L0387	L1002
L0009	L0034	L0057	L0243	L0294	L0319	L0342	L0365	L0388	L1003
L0010	L0035	L0059	L0244	L0295	L0320	L0343	L0366	L0390	L1004
L0012	L0036	L0100	L0245	L0296	L0321	L0344	L0367	L0391	L1005
L0013	L0037	L0175	L0246	L0297	L0322	L0345	L0368	L0392	L1008
L0014	L0038	L0224	L0247	L0298	L0323	L0346	L0369	L0393	L1009
L0015	L0039	L0225	L0248	L0299	L0324	L0347	L0370	L0394	
L0016	L0040	L0226	L0249	L0301	L0325	L0348	L0371	L0395	
L0017	L0041	L0227	L0250	L0302	L0326	L0349	L0372	L0396	
L0018	L0042	L0228	L0251	L0303	L0327	L0350	L0373	L0397	
L0019	L0043	L0229	L0252	L0304	L0328	L0351	L0374	L0398	
L0020	L0044	L0230	L0253	L0305	L0329	L0352	L0375	L0399	
L0021	L0045	L0231	L0254	L0306	L0330	L0353	L0376	L0400	
L0022	L0046	L0232	L0255	L0307	L0331	L0354	L0377	L0401	
L0023	L0047	L0233	L0256	L0308	L0332	L0355	L0378	L0402	
L0024	L0048	L0234	L0257	L0309	L0333	L0356	L0379	L0403	

Schedule F—Donor Lines

MON 531 in Coker 312
MON 757 in any variety
MON 1445 in Coker 312
MON 1698 in any variety
MON 15985 in DP50B or PS7
MON 88913 in Coker 130, PS7 or Suregro 125
MON 15985 x MON 88913 in PS7 or Suregro 125
MON 1076 in any variety
MON 15947 in any variety

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Monsanto Company and Delta and Pine Land Company, Defendants.

Case: 1:07–cv–00992.

Assigned To: Urbina, Ricardo M.

Assign Date: 5/31/2007.

Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated August 14, 2006, pursuant to which Monsanto Company (''Monsanto'') will acquire Delta and Pine Land Company (''DPL''). The United States filed a civil antitrust Complaint on May 31, 2007, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the development, production, and sale of traited cottonseed—cottonseed genetically modified to contain desirable characteristics from non-cottonseed sources—in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would likely result in higher prices and fewer choices for cotton farmers in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee) and Southeast (Alabama, Georgia, Florida, North Carolina, South Carolina, and Virginia).

At the same time the Complaint was filed, the United States also filed a Hold Separate and Preservation of Assets Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anti competitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, (1) Defendants must divest Stoneville Pedigreed Seed Company (''Stoneville''), certain cottonseed lines developed by DPL for the MidSouth and Southeast, and additional cotton breeding assets of Monsanto (collectively, the ''Enhanced Stoneville Assets'') to an acquirer or acquirers acceptable to the United States; (2) Defendants must divest to Syngenta Crop Protection AG (''Syngenta'') forty-three DPL cottonseed lines containing Vip Cot, Syngenta's insect-resistant trait technology that DPL was developing for cottonseed (the ''VipCot Assets''); and (3) Defendant Monsanto must modify its cottonseed trait licenses with seed companies to permit licensees to breed and sell, without penalty, cottonseed containing non-Monsanto traits and cottonseed containing both licensed Monsanto traits and non-Monsanto traits, and modify its Cotton States licenses to remove any provision that allows Monsanto to terminate the license if the licensee sells cottonseed containing other traits.

Until the divestiture of the Enhanced Stoneville Assets has been accomplished, the Hold Separate requires Defendants to take all steps necessary to ensure that DPL is operated as an independent, ongoing, economically viable competitive business held entirely separate, distinct and apart from Monsanto's commercial operations. The proposed Final Judgment provides that if the Enhanced Stoneville Assets are not sold within the time period prescribed in the proposed Final Judgment to an acquirer or acquirers acceptable to the United States, Monsanto will divest DPL.

The Hold Separate also requires Defendants to preserve the divestiture assets. Until the divestiture of the Enhanced Stoneville Assets, Defendants must take all steps necessary to ensure that Stoneville will be maintained and operated as an ongoing, economically viable and active competitor in the development, production, and sale of traited cottonseed. Until the divestiture of the VipCot Assets has been accomplished, Defendants must preserve the VipCot Assets and use all reasonable efforts to proceed with their

development, including maintaining all production processes for the assets, so as not to unduly delay the commercialization and sale of cottonseed containing VipCot in the United States.

The settlement ensures the continuation of current competition in the MidSouth and Southeast between Stoneville and DPL. It also preserves Syngenta's ability to bring cottonseed with VipCot to the market with minimal delay. And, it provides trait developers a seed company independent of Monsanto offering a platform of high-quality germplasm for the development of non-Monsanto traited cottonseed for the MidSouth and Southeast, preserving the prospects for trait competition in cottonseed.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Monsanto is a Delaware corporation with its headquarters in St. Louis, Missouri. Monsanto is a leading global provider of agricultural products for farmers, including seeds for cotton, soybeans, and corn; in-the-seed trait technologies that protect crops against damage from insects and weeds; and crop protection chemicals such as the herbicide Roundup. Monsanto's total revenues in 2006 exceeded $7.3 billion. The vast majority of cotton grown in the U.S. contains biotech traits, and over 96% of the traited cottonseed sold domestically contains Monsanto traits. Monsanto's two groups of cottonseed traits are marketed under the brand names (a) Roundup Ready, and its successor Roundup Ready Flex, both of which make cotton resistant to harm from glyphosate-based herbicides like Monsanto's Roundup, and (b) Bollgard, and its successor Bollgard II, both of which make cotton plants toxic to lepidopteran insect pests such as the cotton bollworm. Monsanto licenses its traits to seed companies, including DPL.

Monsanto's cottonseed sales, primarily through its Stoneville subsidiary, account for approximately 16% of the traited cottonseed sold in the United States in 2006, making Monsanto one of the largest sellers of traited cottonseed in the United States. In the MidSouth and Southeast, Monsanto accounted for 17% and 8%, respectively, of all traited cottonseed sales.

Defendant DPL is a Delaware corporation with its headquarters in Scott, Mississippi. DPL is the largest supplier of traited cottonseed in the United States. In 2006, DPL accounted for approximately 56% of the traited cottonseed sold in the United States, with sales exceeding $417 million. In the MidSouth and Southeast, DPL accounted for 79% and 87%, respectively, of all traited cottonseed sales. DPL does not itself produce traits, but works with biotechnology companies to develop cottonseed traits and to breed the resulting traits into DPL germplasm (the genetic material containing the inherent qualities of cottonseed, such as yield and fiber quality).

The combination of Monsanto and DPL would create the largest provider of traited cottonseed in the United States and give the combined firm about 95% of traited cottonseed sales in the MidSouth and Southeast. The proposed transaction would also eliminate DPL as a partner independent of Monsanto for competing trait developers, thereby substantially delaying or preventing the development and introduction of cottonseed containing non-Monsanto traits. Thus, the proposed transaction would lessen competition substantially in violation of Section 7 of the Clayton Act.

B. The Cotton Industry

Cotton is currently grown on over fifteen million acres in the United States, in seventeen states across the Southern United States from Virginia to California. The industry recognizes four distinct growing regions: the MidSouth, Southeast, Southwest (Texas, Kansas, and Oklahoma), and West (Arizona, New Mexico, and California). The cottonseed varieties grown vary by region because growing conditions, such as soil type and climate, affect seed performance. Farmers choose cottonseed varieties that perform best in their geographic area, placing the greatest emphasis on a variety's yield (*i.e.*, the expected amount of cotton produced per acre).

Cottonseed companies continually work on developing improved cottonseed varieties through their breeding programs. Cotton breeding is a costly and time-consuming process in which the cottonseed company selects lines to breed together (or ''cross''), plants cottonseed generated by that initial cross, and then selects the best plants for further crossing to create a variety with the desired characteristics. In most cases, it takes eight to ten years from the initial cross until a new conventional cottonseed variety (*i.e.*, seed containing no transgenic traits) is ready for market, while a traited version of that same conventional variety may take an additional two to three years.

The success of a cottonseed company's breeding program is dependent on many factors, the most important of which are the quantity and quality of available breeding materials, *i.e.*, germplasm. A company with a large collection of high-quality, or elite, germplasm has a significant advantage because it is able to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.

1. The Development of Traited Cottonseed

Monsanto and DPL partnered in the 1980s to develop and produce traited cottonseed. DPL contributed its high-quality germplasm and experienced cotton breeders; Monsanto, its insect-resistant and herbicide-tolerant traits. In 1996, DPL began to sell the first cottonseed with Monsanto's insect-resistant trait (Bollgard) and, the following year, introduced a variety with Monsanto's herbicide-tolerant trait (Roundup Ready).

Farmers quickly adopted Monsanto-traited cottonseed because its use significantly lowered fanning costs and reduced the risk of crop loss. Farming with conventional seed involved labor-intensive, costly herbicide and insecticide applications at specific times in the growing season. Farmers had to target herbicide applications only on weeds to avoid killing the cotton plants. By planting cottonseed containing an herbicide-tolerant trait, such as Roundup Ready, farmers can spray herbicide over the entire crop to kill weeds without killing the young cotton plants. Cottonseed containing an insect-resistant trait, such as Bollgard, reduces insecticide purchases and spraying. Today, almost all of the cottonseed planted in the MidSouth and Southeast, where insects and weeds pose significant problems, contains traits that provide both insect resistance and herbicide tolerance.

When farmers acquire traited cottonseed, they pay a price per bag to the seed distributor, who, in turn, pays the seed manufacturer (*e.g.*, DPL) for the seed and a separate license fee to the developer of the trait (*e.g.*, Monsanto).

This license fee, commonly referred to as the ''technology fee,'' is usually collected by the seed distributor for the trait developer. Typically, the trait developer shares a portion of the technology fee with the seed distributor and the seed manufacturer. The technology fee can constitute as much as 80% of farmers' total costs for a bag of traited cottonseed.

Only two non-Monsanto cotton traits are currently commercialized. WideStrike is an insect-resistant trait developed by Dow AgroSciences to compete with Monsanto's Bollgard trait. WideStrike is only available in Dow's Phytogen cottonseeds, which are primarily used in California where they perform well. LibertyLink, a trait developed by Bayer CropScience to make cotton tolerant to glufosinate herbicides, competes with Monsanto's Roundup Ready glyphosate herbicide-tolerant trait. LibertyLink is only available in Bayer's FiberMax cottonseeds, which are primarily used in the Southwest where they perform well. Together, cottonseed containing WideStrike or LibertyLink accounted for less than 5% of total United States traited cottonseed sales in 2006.

2. DPL's Trait Development With Monsanto's Competitors

After a failed attempt to merge with Monsanto in the late 1990s, DPL commenced a strategy to replace (or ''trade-out'') the Monsanto traits in DPL cottonseed with traits developed by Monsanto's competitors. DPL has worked with several biotechnology companies, including Syngenta, DuPont, Bayer, and Dow, to develop cottonseed containing the traits developed by these companies that would compete with cottonseed containing Monsanto traits.

The process to develop a cotton trait and breed and commercialize cottonseed varieties with that trait typically takes eight to twelve years and costs over $100 million. The process often requires thousands of attempts before developing a traited cottonseed that can be used to breed commercial varieties. In addition, extensive regulatory approvals, both in the United States and abroad, are required.

Trait developers consider DPL an attractive partner for two reasons. First, DPL is in a strong position to introduce new trait technologies due to its extensive breeding programs, elite germplasm collection, technical service capabilities, know-how, brand recognition, and market position. Second, DPL's trait licenses with Monsanto allow DPL to offer competing trait developers the ability to combine or ''stack'' their traits in DPL cottonseed with Monsanto traits. This stacking right would allow, for example, the developer of an insect-resistant trait to bring that trait to market in cottonseed that also contains Monsanto's Roundup Ready (or Roundup Ready Flex) herbicide-tolerant trait. Most United States farmers choose cottonseed that contains both an insect-resistant trait and an herbicide-tolerant trait. Monsanto's trait licenses with cottonseed companies other than DPL severely restrict the ability of those companies to work with other trait developers, with some licenses prohibiting stacking of Monsanto's traits with another company's traits.

DPL's most advanced work with non-Monsanto trait developers is with Syngenta. DPL's developmental work with Syngenta resulted in a 2004 agreement to commercialize cottonseed with Syngenta's VipCot insect-resistant traits. VipCot has been incorporated into some of DPL's best germplasm, and DPL had expected, before Monsanto's proposed acquisition was announced, to begin marketing such cottonseed as early as 2009.

Monsanto's Cottonseed Business

Facing DPL's strategy to replace Monsanto traits in DPL seed with traits developed by Monsanto's competitors, Monsanto set about building its own cottonseed business to compete vigorously against DPL. Pursuant to this strategy, Monsanto began its Cotton States program in early 2002. Through Cotton States, Monsanto obtains licenses for cotton germplasm that small seed companies, private breeders and universities have developed; improves the germplasm through selective breeding; introduces Monsanto traits; and out-licenses the resulting traited cottonseed varieties to distributors and small cottonseed companies for sale under private labels.

In 2005, Monsanto repurchased Stoneville, the second-largest traited cottonseed company in the MidSouth and Southeast. (Monsanto had previously purchased Stoneville in 1996, and sold it in 1999 shortly before abandoning its attempt to acquire DPL.) Upon reacquiring Stoneville, Monsanto immediately invested capital to improve Stoneville's competitive position. With the acquisition of Stoneville, Monsanto became the second largest seller of traited cottonseed in the important MidSouth and Southeast regions.

Monsanto aggressively worked to strengthen its cottonseed business by, among other things, focusing on advanced breeding techniques and germplasm development and investing in breeding facilities. Monsanto predicted internally that these investments would enable Monsanto to increase its share of the cottonseed business in competition with DPL.

C. Product and Geographic Markets

The relevant antitrust product and geographic markets are the development, commercialization, and sale of traited cottonseed for the MidSouth and Southeast. Growing conditions for cotton differ across regions due to weather conditions, soil type, and varied demands for weed and insect control. Farmers demand cottonseed varieties that produce high yield for their particular growing conditions. Monsanto and DPL recognize this demand and market cottonseed varieties by region.

In many regions of the country, particularly the MidSouth and Southeast, farmers demand that cottonseed have traits that provide insect resistance and herbicide tolerance. In the MidSouth and Southeast, approximately 90% of traited seed purchased by farmers contains both types of traits. Monsanto prices traits by region.

Cotton is a particularly high-value crop in the MidSouth and Southeast, where over 50% of domestic cotton is grown. The cost of cottonseed amounts to only a fraction of the total cost of growing cotton. A small but significant increase in the price of traited cottonseed in the MidSouth and Southeast regions would not cause sufficient farmers to plant other crops, or switch sufficient cottonseed purchases to conventional (non-traited) cottonseed or cottonseed varieties not well suited for their regions to make the price increase unprofitable.

D. The Competitive Effects of the Transaction on the Market for the Development, Production, and Sale of Traited Cottonseed in the MidSouth and Southeast

Monsanto's acquisition of DPL would substantially lessen competition for the development, commercialization, and sale of traited cottonseed in the MidSouth and Southeast. First, the combination would increase the merged firm's ability and incentive to raise prices and reduce choices for traited cottonseed in the MidSouth and Southeast. In the MidSouth, DPL and Stoneville account for approximately 79% and 16%, respectively, of traited cottonseed sales. In the Southeast, DPL and Stoneville account for approximately 87% and 8%, respectively, of traited cottonseed sales. After the proposed acquisition, the combined Monsanto and DPL would

have a market share of approximately 95% for traited cottonseed sales in both the MidSouth and Southeast.[1]

Second, the merger would eliminate DPL as a partner independent of Monsanto for developers of cotton traits that would compete against Monsanto's traits. Syngenta's current efforts to develop and commercialize with DPL cottonseed with Syngenta's VipCot insect-resistant technology to compete with Monsanto's Bollgard traits would be substantially delayed or prevented, preserving Monsanto's current dominance. And, the merger would likely delay, if not deter, efforts to develop other traits that would provide benefits to United States cotton farmers, including herbicide-tolerant traits that would compete with Monsanto's Roundup Ready traits. As a result, farmers likely would have fewer choices of, and face higher prices for, traited cottonseed.

E. Entry

Entry into the traited cottonseed business would be difficult, time consuming, and expensive. It requires the assets and expertise both to breed high-performing varieties of cottonseed and to develop or obtain traits providing insect resistance and herbicide tolerance. For a company that has developed a trait, *de novo* entry to develop, breed, and commercialize cottonseed varieties with the trait takes approximately twelve years, costs millions of dollars, requires a sufficient supply of high-quality germplasm, and is uncertain. Therefore, entry into the traited cottonseed business would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract an anticompetitive increase in the price of traited cottonseed by a combined Monsanto and DPL.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment remedies the anticompetitive effects of the acquisition alleged in the Complaint—the elimination of competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed and the elimination of DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto—by requiring Defendants to divest the Enhanced Stoneville Assets to an approved acquirer, to divest to Syngenta over forty DPL cottonseed breeding lines containing VipCot, and to make certain licensing term modifications to Monsanto's Cotton States and seed company licenses.

Taken together, these provisions will preserve existing competition in the market for traited cottonseed in the MidSouth and Southeast, will allow Syngenta to market cottonseed with VipCot with no more than minimal delay, and will ensure the continued presence of a cottonseed company independent of Monsanto with sufficient germplasm and breeding capabilities to serve as an effective platform for development of cottonseed traits in competition with Monsanto.

The proposed Final Judgment and its accompanying schedules set forth the specific assets to be divested (including certain limitations to the assets being divested), the modifications that Defendant Monsanto must make to its third-party licenses, and the other obligations of Defendants. The following describes these remedy provisions:

A. The Enhanced Stoneville Assets

The Enhanced Stoneville Assets consist of Monsanto's Stoneville business, promising Monsanto cottonseed germplasm, and twenty lines of elite DPL germplasm, including a dozen of DPL's most promising developmental lines for the MidSouth and Southeast as well as Delta Pearl, the parent of DPL's highly-popular DPL555 variety. The proposed Final Judgment requires Defendants to divest the Enhanced Stoneville Assets to an acquirer acceptable to the United States in its sole discretion. The acquirer must have a credible commitment to the traited cottonseed market and have the intent and capability of competing effectively in the market. The Defendants must divest the assets in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the acquirer as part of a viable, ongoing business engaged in the development, production, and sale of traited cottonseed. These provisions are designed to ensure that the Enhanced Stoneville Assets will be used to preserve competition that would otherwise be lost as a result of the acquisition.

This divestiture will provide the acquirer of the Enhanced Stoneville Assets the tools it needs—including valuable germplasm from Stoneville, Monsanto and DPL—to be a viable and active competitor in the MidSouth and Southeast, restoring the traited cottonseed competition that would otherwise be lost as a result of the acquisition. The Enhanced Stoneville Assets will provide the acquirer a significant base of current and developmental varieties that would be attractive to trait developers looking to introduce traits into cottonseed, particularly cottonseed well suited to the MidSouth and Southeast. The remedy in the proposed Final Judgment will give the acquirer capabilities that exceed those of Stoneville and a foundation on which to replicate the platform for trait development and commercialization that DPL previously provided.

The Enhanced Stoneville Assets include:

1. Stoneville

Defendants will divest Monsanto's U.S. Stoneville business, including all U.S. Stoneville cotton germplasm. This divestiture will give the acquirer the benefit of Stoneville's existing presence in the MidSouth and its germplasm development pipeline, which includes approximately 35 mid-to-full- and full-season lines for potential commercialization in the MidSouth and Southeast between 2008 and 2012. The divestiture will also include Stoneville's breeding facilities, tangible assets, brand names, breeder records and other intangible assets.

The proposed Final Judgment also requires Monsanto to grant the acquirer licenses to Monsanto's current Roundup Ready and Bollgard traits on terms at least as favorable as DPL's current terms with respect to stacking rights, revenue sharing, and options for licensing future traits. This licensing requirement will provide the acquirer of Stoneville the same ability as DPL to offer other trait developers a platform upon which to stack non-Monsanto traits with Monsanto traits.

2. Additional Monsanto Cotton Germplasm

Divesting Stoneville by itself would not fully restore the lost competition between Monsanto and DPL as it would fail to capture the breadth of Monsanto's cotton breeding program that supported Monsanto's projected share growth. In addition to Monsanto's improvements to Stoneville (which included adding a breeding station and personnel), Monsanto worked on advanced breeding techniques and germplasm development to strengthen its future competitive position. The proposed Final Judgment requires Monsanto to divest the germplasm and technology related to

[1] The MidSouth and Southeast traited cottonseed markets are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly used in merger analysis and explained in Appendix A of the Complaint, Monsanto's acquisition of DPL would increase the HHI by 3310 in the MidSouth, resulting in a postmerger HHI of 9110. In the Southeast, the proposed acquisition would increase the HHI by 1489, resulting in a postmerger HHI of 9184.

these programs, as described below. As some of this work was undertaken in connection with Monsanto's trait development efforts, the proposed Final Judgment allows Monsanto to retain assets (and research rights to germplasm) that directly relate to trait development.

Advanced Exotic Yield Lines: Defendants will divest the exclusive right to commercialize varieties from the Advanced Exotic Yield Lines set forth in Schedule D of the proposed Final Judgment. Monsanto developed this germplasm as part of its ongoing non-transgenic yield trait discovery project, which seeks to discover traits in exotic cotton plants that could be bred into commercial varieties to increase yield. This project has resulted in the creation of promising developmental germplasm lines. Monsanto anticipated that varieties developed from these lines would be well suited for the MidSouth and Southeast and could be introduced as early as 2009. The acquirer will be able to commercialize such varieties and use the lines for additional breeding. As these lines were part of Monsanto's ongoing trait research project, Monsanto will be allowed to obtain a license back from the acquirer to continue to use these lines for that research effort.

Marker Assisted Breeding (''MAB'') Populations: Defendants will divest all of the germplasm from Monsanto's MAB program, as listed in Schedule E of the proposed Final Judgment. This program was intended to enable breeders to use sophisticated molecular technology to aid in the selection of promising lines to advance to the next breeding stage. Monsanto anticipated that Stoneville varieties developed through the MAB program would reach the market by 2011, and that MAB would be the primary development source for the varieties that Stoneville would commercialize throughout the next decade.[2]

Cotton States Germplasm: Defendants will divest to the acquirer a non-exclusive, royalty-free license to sell and breed with varieties from Monsanto's recently established Cotton States program that Stoneville currently sells today. In addition, as Monsanto typically uses germplasm in the Cotton States program that is owned by other entities (the ''Cotton States Licensors''), Monsanto will relinquish to the acquirer the rights it possesses to work with the Cotton States Licensors to commercialize varieties that result from pre-existing crosses of Stoneville germplasm and Cotton States Licensors germplasm.[3]

Other Germplasm: Defendants will divest all other germplasm in Defendant Monsanto's possession, except that Monsanto may retain, with certain limitations, certain categories of germplasm used predominantly in its trait development and licensing business.

3. DPL Germplasm

DPL's success is due in significant part to its large collection of high-quality cotton germplasm from which it breeds high-yielding varieties. To ensure that the acquirer will have the scale and scope necessary in the Southeast and MidSouth to be an effective and competitive platform for trait development, Defendants will divest twenty DPL conventional varieties.[4]

Eight of the twenty varieties are in the pedigrees of many of DPL's popular current varieties in the MidSouth and Southeast. In particular, four of these varieties (AZ2099, DP491, Delta Pearl, and DP565) are the recurrent conventional parents for DPL commercial traited varieties that today account for approximately 55% of the cottonseed sold in the Southeast (where Stoneville presently holds only an 8% share of sales). Delta Pearl is the parent of the high-yielding DPL555, which is by far the dominant cottonseed variety in the Southeast.

The twelve other divested DPL varieties constitute a significant portion of DPL's breeding pipeline for the MidSouth and Southeast and represent the varieties, and breeding stock for the varieties, that DPL had chosen to bring to market over the next decade. These twelve varieties were bred at the DPL breeding stations that focus on developing germplasm well suited for the MidSouth and Southeast. Over the past four years, each of these twelve varieties has been ranked by DPL during the regular course of business as falling within DPL's top category for conventional lines based on the variety's performance characteristics, such as yield, fiber quality, and disease resistance. The superiority of these twelve lines is underscored by the fact that DPL selected them for introgression with the traits that DPL was developing with Syngenta, as well as for introgression with Monsanto's latest insect-resistant and herbicide-tolerant traits.

The proposed Final Judgment permits Defendants to retain a license to continue using these twenty lines to breed new varieties and to sell exclusively varieties that contain only Monsanto's traits. This exception to total divestiture (*i.e.*, permitting Defendants to continue selling varieties currently in the market and continue breeding with the divested varieties) is necessary to preserve DPL's current competitiveness, prevent disruption to its breeding program, and provide DPL the ability to compete effectively in the future. The acquirer of the Enhanced Stoneville Assets will have use of these varieties for its breeding program and will have rights to commercialize varieties (including in the MidSouth and Southeast) that contain traits being developed by other trait providers, either alone or in combination with Monsanto's traits.[5] With these rights, the acquirer will be in a position to provide trait developers with a competitive alternative to DPL going forward.

The proposed Final Judgment allows Defendants to continue, for a limited period of time, to sell conventional versions of some of the divested DPL varieties currently being sold by DPL in and outside of the United States, providing for a continuity of supply of conventional cottonseed.

4. Defendant Monsanto Must Divest DPL if Enhanced Stoneville Assets Are Not Divested in a Timely Manner

In merger cases where the United States seeks a divestiture remedy, it requires completion of the divestitures

[2] Although the Advanced Exotic Yield Lines and MAB Populations provide the acquirer with promising germplasm for expanding Stoneville's market share, they provide a limited platform for introducing non-Monsanto traits because many of these lines are already introgressed with Monsanto traits. The proposed Final Judgment addresses this limitation by requiring Defendants to allow the acquirer to breed out Monsanto traits from these lines (creating ''Null Lines''). Further, Defendants are also required to provide any information necessary for the acquirer to obtain regulatory approval for varieties developed from Null Lines.

[3] The proposed Final Judgment, however, does not require Monsanto to divest its Cotton States program. Insisting upon divestiture of the program would have required obtaining consent from all of the Cotton States Licensors and could have resulted in disruption to the licensors' financially beneficial current contractual and business relationships with Monsanto. Rather, this divestiture provides Stoneville the ability to continue working with the germplasm that it had been developing prior to the acquisition.

[4] In 2006, DPL purchased rights to germplasm owned by Syngenta. Under the proposed Final Judgment, Defendants will divest these conventional lines to the acquirer in addition to the twenty lines discussed above.

[5] The proposed Final Judgment limits the acquirer in one respect with regard to non-Monsanto traits. For seven years, Monsanto may prevent it from ''triple-stacking'' in the twenty varieties a Monsanto glyphosate-tolerant trait, a Monsanto insect-resistant trait, and any non-glyphosate herbicide-tolerant trait available at the time the Complaint was filed. Nothing in the decree, however, prohibits Monsanto or the acquirer from commercializing such a triple-stacked cottonseed if licenses could be obtained from all affected rights-holders.

within the shortest time period reasonable under the circumstances. In this case, the proposed Final Judgment provides that Defendants must complete the divestiture within ninety (90) calendar days after the filing of the Complaint. Defendants must use their best efforts to divest the Enhanced Stoneville Assets as expeditiously as possible. The United States, in its sole discretion, may grant one or more extensions of time, not to exceed sixty (60) calendar days in total.

In the event that Defendants do not accomplish the divestiture of the Enhanced Stoneville Assets within the time period permitted in the proposed Final Judgment, the proposed Final Judgment provides that Defendant Monsanto shall divest DPL within sixty (60) days. Requiring divestiture of the acquired company would be necessary to ensure the full restoration of competition as quickly as possible should Defendants not be able to divest the Enhanced Stoneville Assets in an acceptable manner.

If the Defendant Monsanto has not divested DPL within the time period permitted by the proposed Final Judgment, then a trustee shall be appointed by the Court upon application of the United States. The proposed Final Judgment provides that Monsanto will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth the trustee's efforts to accomplish the divestiture of DPL. At the end of ninety (90) calendar days, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. The Syngenta/VipCot Divestiture

The proposed Final Judgment requires Defendants to divest to Syngenta the VipCot Assets listed in Schedule C of the proposed Final Judgment. This divestiture seeks to minimize any delay the acquisition could cause in the commercialization of cottonseed containing VipCot, Syngenta's insect-resistant trait technology that would compete against Monsanto's Bollgard family of traits. The VipCot assets include forty-three lines of DPL germplasm into which DPL has incorporated VipCot, along with performance data and other information.[6] These lines are based on the most promising germplasm that DPL has in its development pipeline for geographies across the Cotton Belt, including the MidSouth and Southeast. They are at various stages of development, with DPL anticipating commercializing varieties from five of these lines as early as 2009, three in 2010 or 2011, and the remainder in 2011 and beyond.

The lines will be transferred to Syngenta along with certain rights to allow Syngenta, by itself or working with others, to bring these varieties to market. Syngenta will have exclusive rights to commercialize varieties developed from these lines so long as the variety has at least one of the Syngenta trait events listed in Schedule C of the proposed Final Judgment, which includes the events that form VipCot. Syngenta will also have exclusive rights to breed with the Syngenta-traited versions of these lines. To facilitate breeding, Monsanto will provide Syngenta the ''recurrent parent'' conventional germplasm for each of the divested lines until December 21, 2014, which will allow Syngenta to complete development of these lines and add other traits.

The proposed Final Judgment also requires Monsanto to offer Syngenta a license to Roundup Ready Flex so that Syngenta can commercialize these VipCot lines stacked with Roundup Ready Flex. Such a license will permit Syngenta to advance these lines by introgressing Roundup Ready Flex into them. It will also permit Syngenta to sell, either independently or in conjunction with an established cottonseed company with a Roundup Ready Flex license, varieties stacked with VipCot and Flex.

The VipCot divestiture to Syngenta will therefore allow Syngenta to commercialize VipCot on the same schedule as DPL's anticipated commercialization and with the same range of options regarding stacking herbicide tolerance or other traits. Defendants must use their best efforts to divest the VipCot Assets as expeditiously as possible and shall not take any action that would harm the VipCot Assets or in any way impede their divestiture.

[6] One of the forty-three lines is a line that DPL purchased from Syngenta in 2006 into which DPL introduced VipCot.

Changes in Third Party Licenses

The proposed Final Judgment requires Monsanto to modify its third-party cottonseed trait and Cotton States Lines licenses no later than ten (10) days after the date of sale of the Enhanced Stoneville Assets, subject to the approval of the United States in its sole discretion. Monsanto will modify its third-party cottonseed trait licenses to remove restrictions on the ability of licensees to develop, market, or sell cottonseed containing traits of companies other than Monsanto, or to combine the licensed Monsanto traits in cottonseed with the traits of other companies. Monsanto will also modify the Cotton States Lines licenses to eliminate any provision that allows Monsanto to terminate the license if the licensee sells cottonseed containing other traits.

These changes will give these competing cottonseed companies the ability to partner with trait developers other than Monsanto without any financial penalty and to offer traits desired by farmers. Trait developers will thereby have access to close to half of the current U.S. cottonseed market, without having to deal with the combined Monsanto/DPL. These changes will ensure that Monsanto cannot prevent trait developers from bringing competing, non-Monsanto traits to the market.

D. Notice Provisions

The proposed Final Judgment provides that Defendant Monsanto shall provide notice to the United States prior to acquiring any company that develops and sells cottonseed in the United States or has developed, or has under development, traits for commercialization in cottonseed in the United States, unless the transaction is otherwise subject to Hart-Scott-Rodino reporting requirements. This provision will allow the United States to assess whether any such transaction would be likely to substantially lessen competition.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton

Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Monsanto's acquisition of DPL. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition in the market for the development, production, and sale of traited cottonseed. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with amendments to the APPA in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103,2007 WL 1020746, at *9–16 (D.D.C. Mar. 29, 2007) (assessing public interest standard under APPA and effect of 2004 amendments).[7] Courts in this circuit have held—both before and after the 2004 amendments—that the United States is entitled to deference in crafting its antitrust settlements, especially with respect to the scope of its complaint and the adequacy of its remedy, which are the ''two most significant legal questions'' relating to a public interest determination. *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995); *SBC Commc'ns,* 2007 WL 1020746, at *12–*16.[8]

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[9] In making its public interest determination, a district court must accord due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *SBC Commc'ns*, 2007 WL 1020746, at *16 (United States entitled to ''deference'' as to ''predictions about the efficacy of its remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls

[7] Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). The 2004 amendments do not affect the substantial precedent in this and other circuits analyzing the scope and standard of review for APPA proceedings. *See SBC Commc'ns*, 2007 WL 1020746, at *9 (''[A] close reading of the law demonstrates that the 2004 amendments effected minimal changes. * * * '').

[8] The *Microsoft* court explained that a court making a public interest determination under the APPA should consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *Microsoft,* 56 F.3d at 1458–62.

[9] *Cf BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 2007 WL 1020746, at *16.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 2007 WL 1020746, at *14.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 2007 WL 1020746, at *9.[10]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[10] *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''[T]he Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

Dated: May 31, 2007.

Respectfully submitted,

For Plaintiff

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Part IV

Office of Management and Budget

Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA); Notice

OFFICE OF MANAGEMENT AND BUDGET

Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of decision.

SUMMARY: The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) can provide strong confidentiality protections for statistical information collections, such as surveys and censuses, as well as for other statistical activities, such as data analysis, modeling, and sample design, that are sponsored or conducted by Federal agencies. The Office of Management and Budget (OMB) is issuing Implementation Guidance for Title V of the E-Government Act, the Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107–347). The purpose of the CIPSEA implementation guidance is to inform agencies about the requirements for using CIPSEA and to clarify the circumstances under which CIPSEA can be used.

Authority: 31 U.S.C. 1104(d); 44 U.S.C. 3504 (specifically (a)(1)(B)(iii) and (v), (e)(1), (3) and (5), and (g)(1)); Pub. L. 107–347 section 503(a), 44 U.S.C. 3501 note.

FOR FURTHER INFORMATION CONTACT: Brian Harris-Kojetin, Ph.D., Statistical and Science Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, NW., Washington, DC 20503. Telephone: 202–395–3093.

SUPPLEMENTARY INFORMATION:

A. Background

Statistics collected and published by the Federal Government constitute a significant portion of the available information about the United States' economy, population, natural resources, environment, and public and private institutions. There are more than 70 Federal agencies or organizational units that carry out statistical activities as their principal mission or in conjunction with other program missions, such as providing services or enforcing regulations. In addition to these 70 agencies, many other Federal agencies or units may collect statistical information to use for specific program needs.

Prior to the enactment of CIPSEA, a patchwork of legislative protections governed the confidentiality of data gathered for statistical purposes by the different agencies and units. Some agencies had strong statutory authority to protect the confidentiality of the data they gathered for statistical purposes, while other agencies had weak or no legislative authority to protect confidentiality. In addition, the ability of the designated statistical agencies to share information to improve the efficiency of the Federal statistical system was limited by statutory constraints affecting those agencies.

By establishing a uniform policy for all Federal statistical collections, this law will reduce public confusion, uncertainty, and concern about the treatment of confidential statistical information by different Federal agencies. By establishing consistent rational principles and processes to buttress confidentiality pledges, the guidance that implements the law will harmonize confidentiality claims and set minimum standards for safeguarding confidential statistical information. Such consistent protection of confidential statistical information will, in turn, reduce the perceived risks of more efficient working relationships among statistical agencies, relationships that can reduce both the cost and reporting burden imposed by statistical programs.

B. Development and Review

In 2003, OMB and the other members of the Interagency Council on Statistical Policy (ICSP) formed an interagency group to discuss issues that OMB and the agencies anticipated would arise in the implementation of CIPSEA. OMB was particularly interested in understanding the questions and concerns that these statistical agencies had about the new law and how it would affect their activities. OMB also sought to incorporate the best practices of these agencies for handling confidential statistical information.

An initial draft of this implementation guidance was reviewed by the ICSP members, and OMB revised the draft guidance in response to the comments that we received. Based on the use of the law by agencies over the past three years, OMB has also addressed in the guidance specific issues that have arisen, such as nonstatistical agencies' use of CIPSEA.

C. Summary of and Response to Comments Received in Response to the October 16, 2006 Federal Register Notice

OMB issued proposed Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)(Pub. L. 107–347) in October 2006 (71 FR 60,772–60,773). Five public comments were received in response to OMB's request. OMB reviewed the public comments on the guidance and made some modifications in response to the comments. The complete text of the public comments and this document are available on the OMB Web site at *http://www.whitehouse.gov/omb/inforeg/statpolicy.html*.

General Comments

One commenter expressed support for the guidance and stated that ''the proposed guidelines establish principles and policies that will protect the confidentiality of the data provided by respondents to federal statistical surveys'' and noted that the guidance provides ''reasonable approaches to protecting confidentiality, and thereby will reduce the costs and reporting burdens imposed by statistical programs.'' The commenter also noted that it was ''especially useful to see guidelines for statistical agency interactions with outside analysts (e.g., contractors) authorized to see the confidential data.''

I. Introduction

Identifiability

One commenter believed the discussion of the identifiability of personal information in the proposed guidance was insufficient. Although the commenter noted the technical references to Statistical Policy Working Paper #22 [1] and to the Federal Committee on Statistical Methodology's Confidentiality and Data Access Committee's disclosure review checklist,[2] she asked for ''more specific guidance about the meaning of the terms *reasonably inferred* and *direct or indirect means*'' [emphasis in original] and ''how the CIPSEA standard specifically relates to the HIPAA standards of *no reasonable basis to believe* and *risk is very small* [emphasis in original] * * * ''whether a risk assessment is required, how to conduct that risk assessment, what data sources (public and private) must be considered in assessing identifiability'' as well as how much effort and cost are reasonable.

In response to this comment, OMB has included a definition of ''personally identifiable information'' in footnote 21 and provided an example of indirect identification in footnote 23, as follows:

[1] Available at *http://www.fcsm.gov/reports/*.

[2] Available at *http://www.fcsm.gov/committees/cdac/cdac.html*.

[21] ''personally identifiable information'' refers to information which can be used to distinguish or trace an individual's identity, such as his or her name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

[23] Indirect identification refers to using information in conjunction with other data elements to reasonably infer the identity of a respondent. For example, data elements such as a combination of gender, race, date of birth, geographic indicators, or other descriptors may be used to identify an individual respondent.

However, it is beyond the scope of this implementation guidance to provide lists of other data sources that could be used to reidentify respondents or specific risk assessment techniques agencies must employ. As the commenter noted, OMB does provide references to more technical resources that address these issues, such as Statistical Policy Working Paper #22, and a citation to the HIPAA privacy rule has been added. Federal statistical agencies are in the best position to know about the sensitivity of their confidential statistical information and to take appropriate steps to assess and mitigate the risks of reidentification. Because this area is a ''moving target,'' as the commenter noted, OMB, through its Federal Committee on Statistical Methodology, sponsors the Confidentiality and Data Access Committee, which facilitates the sharing and adoption of best practices and latest techniques in disclosure avoidance across Federal agencies.

Relation of CIPSEA to Other Laws

One commenter noted that ''subsection (b) of the Privacy Act of 1974 authorizes numerous disclosures, many of which are inappropriate for CIPSEA records. For example, disclosures for law enforcement purposes'' as well as many routine uses. The commenter asked OMB to ''elaborate on the intersection between CIPSEA and the Privacy Act of 1974.''

As OMB has noted in the guidance, agencies are responsible for ensuring that information protected under CIPSEA is used exclusively for statistical purposes. OMB recognizes that the Privacy Act does permit routine uses that are nonstatistical; these uses are not permitted for CIPSEA-protected information. OMB believes that the minimum standards in the guidance for safeguarding confidential information make clear that agencies need to develop appropriate policies and procedures for CIPSEA-protected information that go beyond those that exist for Privacy Act systems of records; however, we have added the following language to make this explicit in Part I.F. of the guidance:

> On the other hand, if an agency pledges to use the information for only for statistical purposes, then the agency shall not use any other authorities it has available to use the information for non-statistical purposes, because those uses would be contrary to the agency's pledge. For example, if information is protected by CIPSEA and the Privacy Act, some of the routine uses permitted under the Privacy Act would no longer be allowed because they are not for statistical purposes.

Agencies Authorized To Designate Agents

One commenter cited Footnote 31 on page 11 of the proposed guidance [3] that tells agencies that they should consult with OMB regarding use of agents and stated that the use of agents should be subject to public notice and comment. In this footnote, OMB was referring specifically to the review and legal interpretation of a nonstatistical agency's statute and whether that would meet the requirements of CIPSEA and permit the agency to designate agents under CIPSEA. Generally, legal analysis and interpretation are accomplished by the agency. However, when agencies are applying a new statute that OMB has responsibility for, agencies should consult with OMB to ensure a government-wide perspective.

Commenters also had questions about other specific matters that will be addressed during implementation.

II. Requirements for Agencies Collecting or Acquiring Information Protected Under CIPSEA

Non-CIPSEA Pledges

One commenter objected to agencies being restricted from using both the terms ''confidential'' and ''statistical purposes'' together if CIPSEA did not cover the collection. The commenter noted that these terms have meaning independent of CIPSEA and agencies should be able to use them as they see fit. The commenter suggested that ''Rather than prohibit the use of the terms 'confidential' and 'exclusively statistical purposes,' we suggest that OMB advise agencies, as it has in prior guidance, to ensure that they do not use terms that are confusing. OMB could also prohibit the mention of CIPSEA when it is not applicable and require that agencies invoke coverage by CIPSEA only by the mention of that law directly to survey respondents.''

[3] This footnote appears as footnote 40 in this final document.

OMB agrees that the terms ''confidential'' and ''statistical purposes'' have meaning independent of CIPSEA; however, when used together in a pledge to respondents, they clearly meet the requirements of CIPSEA and the protection of this law. Sec. 512 of CIPSEA simply requires that the information be ''acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes.'' The law does not require that CIPSEA be mentioned explicitly, and OMB would certainly prohibit an agency from mentioning the law if it did not apply. It would clearly be confusing to respondents for different protections to be implied by two different agencies both pledging that the information would be confidential and used for exclusively statistical purposes. Thus, it is necessary to ensure that CIPSEA protections or greater protections apply when an agency makes this pledge to respondents.

CIPSEA Pledges

One commenter supported the shorter version of the pledge, but expressed concerns about its comprehensibility. The commenter then suggested that OMB consider developing a formal statistical confidentiality seal that would provide an identifiable marker that would tell individuals what level of protection the information they provide will receive under the law. Specifically the commenter suggested as an example that OMB consider a green-yellow-red color scheme: Green would mean respond with confidence because answers receive the highest level of legal confidentiality protection; yellow would mean respond with caution because answers receive some confidentiality protection but less than the highest level of legal protection; and red would mean no legal confidentiality protections at all.

The CIPSEA pledge was based on a pledge that was thoroughly tested; however, OMB has encouraged further cognitive testing of this pledge by agencies. OMB agrees that it would also be helpful to have more testing on a shortened version. OMB also appreciates the commenter's suggestions regarding potential ''seals'' that would be easy for respondents to understand and recognize, and agrees that this idea is worthy of further investigation and testing. We also agree that this will require a considerable amount of research not only to develop a recognizable seal but also to figure out appropriate ways to present it in different modes. If this research proves fruitful, OMB will consider revising this

implementation guidance and/or issuing other guidance for use of a seal.

III. Minimum Standards for Safeguarding Confidential Information Acquired Under CIPSEA

Costs and Burden of Security Requirements

One commenter noted that during a time of reduced funding resources the implementation requirements call for annual recertification of employees, increased physical and information security, additional record keeping requirements, and additional staff time (to ensure that appropriate confidentiality and security protocols are followed). Providing appropriate security for agency information and information systems does require resources. As with any ongoing program, agencies need to incorporate into their budgets the costs for protecting confidential information throughout the lifecycle of the statistical activities.

Security of Confidential Information in Laptop Computers

One commenter noted that ''recent events have highlighted the particular vulnerability of laptop computers to loss and theft,'' and suggested that additional information be included in the guidance about the security of laptops, PDAs, or other types of devices. OMB agrees with the comment and has modified language in the section on physical and information systems security in Part III. B, which also applies to Part IV. D of the proposed guidance referenced on page 22, so that it now reads:

> Agencies are required to establish appropriate administrative and technical safeguards to ensure that the security of all media containing confidential information is protected against unauthorized disclosures and anticipated threats or hazards to their security or integrity. For example, agencies must ensure that security requirements are followed for reports, documents, printouts, information collection instruments, laptops, PDA's, zip drives, floppy disks, CD-ROMs, or any other IT devices that contain confidential information to prevent access by unauthorized persons.

VII. Data Sharing Under Subtitle B of CIPSEA

Data Linking and Data Sharing

One comment requested that OMB include administrative data as well as other agencies under the data sharing provisions of Subtitle B of CIPSEA to further improve efficiency. OMB notes that Subtitle B is limited in statute to the three designated statistical agencies (BLS, BEA, and Census) and applies only to business data. While OMB appreciates the potential benefits suggested in this comment, CIPSEA does not authorize any other data sharing or authorize additional agencies to share data. However, CIPSEA did not alter other existing authorities for data sharing among Federal agencies.

VIII. Annual Reporting and Review Requirements

Annual Reports to OMB

One commenter requested that the annual reports that agencies provide to OMB be made public and posted on agency Web sites. In the interest of transparency, agencies will now be required to post their reports on their Web sites.

Susan E. Dudley,

Administrator, Office of Information and Regulatory Affairs.

Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)

I. Introduction

A. Overview

Issues of privacy and confidentiality are of increasing concern to respondents to Federal government surveys. Agencies often seek to assuage these concerns by pledging to respondents that the agency will protect the information that respondents provide, and by using whatever statutory authority that the agency has to substantiate this pledge. However, many agencies do not have strong confidentiality provisions in their authorizing statutes. In this case, agencies may be able to use government-wide statutes such as the Privacy Act or exemptions under the Freedom of Information Act as the basis for a pledge to respondents, but these statutes still do not apply to many Federal surveys.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) is a new government-wide law that can provide strong confidentiality protections to many Federal agencies conducting statistical information collections, such as surveys and censuses as well as other statistical activities including data analysis and modeling, sample design, etc. The purpose of this guidance is to inform agencies about the requirements for using CIPSEA and clarify the circumstances under which CIPSEA can be used.

There are several key definitions and distinctions in CIPSEA regarding statistical and nonstatistical agencies, and statistical and nonstatistical purposes, that affect whether CIPSEA can be used by an agency to acquire and protect information. Below is a brief description of these major definitions and distinctions, as well as of issues related to data sharing under CIPSEA, and additional requirements for using CIPSEA that are addressed in greater detail in this guidance.

1. Is the agency a statistical or nonstatistical agency? CIPSEA distinguishes between statistical and nonstatistical agencies or units and imposes different requirements and privileges on these different types of agencies. Briefly, statistical agencies or units are those whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes. More detail and a listing of statistical agencies and units is provided in section I., part G of this section of the guidance.

2. Is the information used for statistical or nonstatistical purposes? CIPSEA provides protection for information acquired for statistical purposes under a pledge of confidentiality. Under CIPSEA, a statistical purpose includes the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups, while nonstatistical purposes include any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular respondent. Information acquired and protected under CIPSEA may only be used for statistical purposes.

3. Is the information being acquired by the Federal agency itself? Agencies acquire information in different ways from a wide variety of respondents. Agencies often acquire information directly from a respondent to a Federal survey. In some cases, these respondents are local or State governments that have themselves collected the information from a respondent. Any agency that directly acquires information from a respondent, including a local or State government, under a pledge of confidentiality for exclusively statistical purposes, is bound by CIPSEA. However, CIPSEA does not restrict or diminish confidentiality protections in law that otherwise apply to a collection of statistical data or information. Agencies protecting information under CIPSEA must follow the requirements specified in section II of this guidance and include an appropriate pledge to respondents. All agencies that have information protected under CIPSEA

must also follow the procedures in section III for safeguarding the security of this information.

4. Is the information being acquired for the Federal agency by contractors or others acting on behalf of the agency? Many agencies acquiring information from respondents do not directly collect the information themselves from respondents but do so through intermediaries such as contractors or researchers who are operating under cooperative agreements or grants at the direction of the agency. CIPSEA defines contractors and their employees, researchers, and employees of private organizations or institutions of higher learning who have a contract or agreement with a Federal agency as ''agents'' and authorizes only some agencies to use agents to acquire information that will be protected under CIPSEA or access CIPSEA-protected information.

5. How can statistical agencies use CIPSEA? Statistical agencies or units that directly acquire information from respondents, including State and local governments, may protect the confidentiality of that information under CIPSEA. Statistical agencies or units may also designate agents to acquire information for the agency under CIPSEA as well as perform other exclusively statistical activities for the agency on CIPSEA-protected information. Statistical activities include the collection, compilation, processing, or analysis of data for the purposes of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment. Statistical activities also include the development of methods or resources that support these activities, such as measurement methods, models, statistical classifications, or sampling frames. More information is provided in section IV about the requirements for statistical agencies designating agents under CIPSEA.

6. How can nonstatistical agencies use CIPSEA? Nonstatistical agencies can use CIPSEA to protect information they are authorized to acquire directly themselves from respondents, including State and local governments. However, nonstatistical agencies or units are not permitted to designate agents under CIPSEA. Therefore, nonstatistical agencies or units may not protect information under CIPSEA if they are using a contractor or other persons who fall under the CIPSEA definition of agents to acquire that information unless they have the authority to designate agents to collect information or perform other statistical activities under some other statute. More information on how nonstatistical agencies can acquire and protect information under CIPSEA is provided in section VI of this guidance.

7. What if a statistical agency acquires information for nonstatistical purposes? OMB expects that the vast majority of information collections conducted by statistical agencies or units will be subject to CIPSEA because these agencies generally collect information for exclusively statistical purposes and pledge confidentiality. Statistical agencies or units that are collecting information that may be used for nonstatistical purposes need to ensure that respondents understand these nonstatistical uses and that CIPSEA does not apply to the specific collection. Requirements for statistical agencies collecting information that may be used for nonstatistical purposes are covered in section V.

8. What data sharing does CIPSEA authorize? Subtitle B of CIPSEA explicitly provides the ability for three designated statistical agencies, the Bureau of Economic Analysis, the Bureau of Labor Statistics, and the Bureau of the Census to share business data. Requirements for data sharing among these designated statistical agencies are outlined in section VII.

9. What other requirements are there for using CIPSEA? Agencies should carefully review this guidance to determine whether CIPSEA applies to any of their information collections or statistical activities. Agencies using CIPSEA are responsible for following all requirements in this guidance. In addition, OMB is requiring agencies that use CIPSEA to report annually to OMB on their use of this law in order to effectively monitor the implementation of CIPSEA across Federal agencies. All agencies that use CIPSEA for their collections are asked to report to OMB annually the information collections CIPSEA applies to and affirm that all of the requirements in this guidance are being met. Statistical agencies protecting information under CIPSEA are further required to report on their use of agents, and the three designated statistical agencies in Subtitle B of CIPSEA are required to report annually on their data sharing activities under CIPSEA. Further information on the reporting requirements is in section VIII of this guidance.

B. Purposes of CIPSEA

The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title V of the E-Government Act of 2002 (Pub. L. 107–347), has two subtitles.

Subtitle A, Confidential Information Protection, concerns confidentiality and statistical uses of information. The purposes of Subtitle A are:

1. To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes;

2. To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose; and

3. To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.[4]

CIPSEA Subtitle A protects information that is acquired for exclusively statistical purposes under a pledge of confidentiality. This subtitle of the law applies to all Federal agencies that acquire information under these carefully prescribed conditions. The protection of information collected under this law is supported by a penalty of a Class E Felony for a knowing and willful disclosure of confidential information. This includes imprisonment for up to five years and fines up to $250,000.[5] Thus, for many agencies this law strengthens the protections afforded to confidential statistical information.

CIPSEA Subtitle B promotes statistical efficiency through limited sharing of business data among three designated statistical agencies, the Bureau of the Census (Census), the Bureau of Economic Analysis (BEA), and the Bureau of Labor Statistics (BLS). The purposes of Subtitle B are:

1. To authorize the sharing of business data among Census, BEA, and BLS for exclusively statistical purposes;

2. To reduce the paperwork burdens imposed on businesses that provide requested information to the Federal Government;

3. To improve the comparability and accuracy of Federal economic statistics by allowing Census, BEA, and BLS to update sample frames, develop consistent classifications of establishments and companies into industries, improve coverage, and reconcile significant differences in data produced by the three agencies; and

[4] Sec. 511(b).

[5] Sec. 513.

4. To increase understanding of the United States economy, especially for key industry and regional statistics, to develop more accurate measures of the impact of technology on productivity growth, and to enhance the reliability of the Nation's most important economic indicators, such as the National Income and Product Accounts.[6]

The remainder of this section of the guidance provides background information on CIPSEA and its applicability to Federal agencies. Sections II through VI provide implementation guidance on CIPSEA Subtitle A, and Section VII provides implementation guidance on Subtitle B. Section VIII covers agency reporting requirements to OMB on the implementation of CIPSEA.

C. Background

There are more than 70 Federal agencies or organizational units that carry out statistical activities as their principal mission or in conjunction with other program missions, such as providing services or enforcing regulations.[7] In addition to these 70 agencies, many other Federal agencies or units may collect statistical information to use for specific program needs. Prior to the enactment of CIPSEA, a patchwork of legislative protections governed the confidentiality of data gathered for statistical purposes by the different agencies and units. Some agencies had strong statutory authority to protect the confidentiality of the data they gathered for statistical purposes, while other agencies had weak or no legislative authority to protect confidentiality. In addition, the ability of the designated statistical agencies to share information to improve the efficiency of the Federal statistical system was limited by statutory constraints affecting those agencies.

Over the years, there have been numerous attempts both to shore up legal protection for the confidentiality of statistical information, and to permit some limited sharing of data for statistical purposes. Strengthening and standardizing statutory protections for the confidentiality of individually identifiable data that are collected for statistical purposes as well as enhancing the capability of Federal agencies to share information for exclusively statistical purposes have always been goals.

In 1971, the President's Commission on Federal Statistics recommended that the term *confidential* should always mean that disclosure of data in a manner that would allow public identification of the respondent or would in any way be harmful to him should be prohibited. In addition, the Commission recommended that a promise to hold data in confidence should not be made unless the agency has legal authority to uphold such a promise, and that legislation should be enacted authorizing agencies collecting data for statistical purposes to promise confidentiality as the term was defined by the Commission.[8]

In July 1977, the Privacy Protection Study Commission stated that ''no record or information * * * collected or maintained for a research or statistical purpose under Federal authority * * * may be used in individually identifiable form to make any decision or take any action directly affecting the individual to whom the record pertains * * *'' [9]

In October 1977, the President's Commission on Federal Paperwork endorsed the confidentiality and ''functional separation'' concepts, but applied them directly and simply to statistical programs, saying that:

- Information collected or maintained for statistical purposes must never be used for administrative or regulatory purposes or disclosed in identifiable form, except to another statistical agency with assurances that it will be used solely for statistical purposes; and
- Information collected for administrative and regulatory purposes must be made available for statistical use, with appropriate confidentiality and security safeguards, when assurances are given that the information will be used solely for statistical purposes.[10]

The policy discussions generated by the three Commissions came together in a bipartisan outpouring of support for the Paperwork Reduction Act of 1980, which largely addressed the efficiency recommendations of the Paperwork Commission. The legislative history of that Act recognized the unfinished work of fitting the ''functional separation'' of statistical information into the overall scheme.

In 1993, a National Academy of Sciences panel on confidentiality and data access recommended that ''Statistical records across all federal agencies should be governed by a consistent set of statutes and regulations meeting standards for the maintenance of such records, including the following features of fair statistical information practices: (a) A definition of statistical data that incorporates the principle of functional separation as defined by the Privacy Protection Study Commission, (b) a guarantee of confidentiality for data, * * * (g) legal sanctions for those who violate confidentiality requirements.'' [11]

To clarify and make consistent government policy protecting the privacy and confidentiality interests of individuals and organizations who furnish data for Federal statistical programs, OMB issued an ''Order Providing for the Confidentiality of Statistical Information'' in June 1997.[12] This order applied the principles of functional separation and protection of confidential information gathered for statistical purposes to twelve principal statistical agencies.

CIPSEA builds upon these and other efforts of the Executive and Legislative branches including H.R. 2885 (the Statistical Efficiency Act of 1999, originally offered by Representative Stephen Horn, and unanimously passed by the House of Representatives) and H.R. 2136 (the Confidential Information Protection Act, originally offered by Representative Tom Sawyer in 2001). Introducing CIPSEA, H.R. 5215, on July 25, 2002, Representative Horn indicated,

> ''The bill's enhanced confidentiality protections will improve the quality of Federal statistics by encouraging greater cooperation on the part of respondents. Even more important, these protections ensure that the Federal Government does not abuse the trust of those who provide data to it under a pledge of confidentiality. * * * the Confidential Information Protection and Statistical Efficiency Act of 2002 makes important, common sense and long overdue improvements in our Nation's statistical programs. It is a bipartisan, good Government measure that has the Administration's strong support. I urge my colleagues to join with us to achieve prompt enactment of the bill.'' [13]

In this guidance, OMB is establishing a uniform policy for all Federal statistical collections to reduce public confusion, uncertainty, and concern about the application of the newly-enacted confidentiality requirements associated with protected statistical information acquired by different Federal agencies. By establishing consistent rational principles and

[6] Sec. 521(b).

[7] *Statistical Programs of the U.S. Government FY 2007,* Office of Management and Budget, Washington, DC.

[8] *Federal Statistics—Report of the President's Commission,* Volume 1, p. 222, September, 1971.

[9] *Personal Privacy in an Information Society—Report of the Privacy Protection Study Commission,* p. 574, July, 1977.

[10] *Statistics—A Report of the Commission on Federal Paperwork,* p. 128, October, 1977.

[11] *Private Lives and Public Policies,* 1993, National Academy Press, Washington, DC.

[12] 62 FR 35,044–35,050.

[13] *Congressional Record,* July 25, 2002, p. E1397.

processes to buttress confidentiality pledges, the law codifies confidentiality claims and sets minimum standards for safeguarding confidential statistical information. Establishing consistent protection of confidential statistical information will, in turn, reduce the perceived risks of more efficient working relationships among statistical agencies, relationships that can reduce both the cost and reporting burden imposed by statistical programs.

D. Authority

The Paperwork Reduction Act (PRA) of 1980 (as amended in 1986 and 1995) requires the Office of Information and Regulatory Affairs (OIRA) within OMB to develop policies, principles, standards, and guidelines for privacy and confidentiality generally; the integrity of confidentiality pledges; and the confidentiality of information collected for statistical purposes.[14] In addition, the Act tasks OIRA to oversee agency compliance with related requirements of the Act and with the policies referenced above.[15] For example, agencies are required to ''inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies.'' [16]

With respect to statistical policy and coordination, the PRA directs OMB to:

- Coordinate the activities of the Federal statistical system to ensure—
  - The efficiency and effectiveness of the system; and
  - The integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes; * * *
- Develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines * * *
- Promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges; [17]

In addition, Title V of the E-Government Act of 2002 authorizes the Director of the Office of Management and Budget to coordinate and oversee the confidentiality and disclosure policies established by CIPSEA. The Director is authorized to promulgate rules or provide other guidance to ensure the consistent interpretation of this title by the affected agencies.[18]

E. Affected Agencies

Executive agencies as defined in 31 U.S.C. 102 or 44 U.S.C. 3502 [19] are subject to the provisions and penalties in CIPSEA Subtitle A if they (1) Acquire information for exclusively statistical purposes under a pledge of confidentiality, or (2) they possess or access information protected by CIPSEA, unless even stronger confidentiality protections apply.[20] CIPSEA also imposes additional requirements on statistical agencies or units, which are defined to include ''an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.'' [21] CIPSEA Subtitle B applies only to the designated statistical agencies, i.e., the Bureau of the Census of the Department of Commerce, the Bureau of Economic Analysis of the Department of Commerce, and the Bureau of Labor Statistics of the Department of Labor.[22]

F. Applicability of CIPSEA

Federal agencies collect and acquire information for a wide variety of purposes and uses, including benefit determinations, program planning and management, program evaluation, measurement of compliance with laws and regulations, and research, as well as for general purpose statistics. When acquiring information, an agency must inform the person or organization being asked to provide information whether or not it will be treated as confidential and the purpose(s) for which the information will be used.[23]

CIPSEA protection applies to any identifiable information acquired by the agency under a pledge of confidentiality for exclusively statistical purposes. For purposes of CIPSEA, this information includes personally identifiable information [24] as well as information that permits the identity of any respondent, such as business establishments, institutions, or State or local governments,[25] to be reasonably inferred by either direct or indirect means.[26] In this guidance, the terms confidential information and confidential data refer to information that is protected by CIPSEA.

CIPSEA can apply only when an agency pledges both to protect the confidentiality of the information it acquires and to use the information only for statistical purposes. CIPSEA defines a statistical purpose to include the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups and includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the above purposes.[27] If information is collected or acquired for any nonstatistical purpose, then CIPSEA shall not be used to protect the confidentiality of the information.[28]

A nonstatistical purpose means the use of information in identifiable form for anything other than a statistical

[14] 44 U.S.C. 3504(e)(1), 3504(e)(5), and 3504(g)(1).

[15] 44 U.S.C. 3506(b)(1)(C), 3506(e)(2)–(4), and 3506(g)(1).

[16] 44 U.S.C. 3506(e)(2).

[17] 44 U.S.C. 3504(e).

[18] Sec. 503(a).

[19] Sec. 502(1).

[20] Sec. 512(a) and 512(b). Agencies may also be governed by other statutes that may have additional restrictions on the use and disclosure of confidential statistical information that apply beyond CIPSEA (Sec. 504(h); Sec. 512(b)(3)).

[21] Sec. 502(8).

[22] Sec. 522.

[23] 5 CFR 1320.8(b)(3).

[24] The term ''personally identifiable information'' refers to information that can be used to distinguish or trace an individual's identity, such as his or her name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

[25] Statistical agencies may collect information from a State or local government that is in the public domain, and, therefore, the statistical agency would typically not pledge to keep that information confidential under CIPSEA or other legal authorities.

[26] Sec. 502(4). Indirect identification refers to using information in conjunction with other data elements to reasonably infer the identity of a respondent. For example, data elements such as a combination of gender, race, date of birth, geographic indicators, or other descriptors may be used to identify an individual respondent.

[27] Sec. 502(9).

[28] There are some authorized, nonstatistical uses of information collected for statistical purposes, such as the use of Decennial Census information for genealogical research, that are noted in Section 504 of CIPSEA. CIPSEA was intended to apply to these collections that are intended for statistical purposes and have only very narrow exceptions for specific nonstatistical uses that do not result in any actions directly affecting the respondent. Agencies acquiring or protecting information under CIPSEA with similar nonstatistical uses of the information should consult with OMB on the applicability of CIPSEA for the information collection. Unless there is a specific exception noted in Section 504 of CIPSEA, CIPSEA clearly prohibits disclosures for administrative, regulatory, law enforcement, or adjudicatory purposes that affect the rights, privileges, or benefits of a particular identifiable respondent absent informed consent. Since some State or Federal laws may require notification of authorities if, for example, child abuse is reported by the respondent, agencies collecting such information shall inform respondents at the time of collection that revelations of this type of information must be reported to legal authorities. Agencies may conduct these collections under CIPSEA if any such nonstatistical uses are clearly described in advance to the respondent (with the respondent providing informed consent), and these procedures are clearly stated in the notices and supporting materials described in Section II. Agencies should also consult with their institutional review boards to determine circumstances when informed consent is appropriate or necessary.

purpose, including any administrative, regulatory, law enforcement, adjudicative, or other purpose that affects the rights, privileges or benefits of a particular identifiable respondent. Providing confidential information in response to a Freedom of Information Act (FOIA) request is also considered a nonstatistical purpose.[29] Since the CIPSEA statute is a (b)(3) statute under FOIA, confidential information covered under CIPSEA is exempt from release pursuant to a FOIA request (5 U.S.C. 552(b)(3)).

Agencies acquire information in different ways from a wide variety of respondents. An agency may collect information directly (*e.g.*, surveys) from individuals, households, businesses, organizations, or institutions, or the agency may acquire information through secondary sources (*e.g.*, from State government agencies).[30] This guidance, in accordance with the law, will use as the more general term, ''acquire,'' to include both agency collections of information directly from respondents, and acquisitions of information from secondary sources.

In many cases, agencies acquire information directly from respondents (including local or State governments) to a Federal survey; in other cases, agencies do not themselves directly acquire information from respondents but do so through intermediaries, such as contractors or researchers who are operating under cooperative agreements or grants at the direction of the agency. CIPSEA defines contractors and their employees, researchers, and employees of private organizations or institutions of higher learning that have a contract or agreement with a Federal agency as ''agents.'' [31]

Any agency that directly acquires information from a respondent, including a local or State government, under a pledge of confidentiality for exclusively statistical purposes, can use CIPSEA to protect the information. However, if an agency is using an agent, such as a contractor, to acquire information for exclusively statistical purposes, the agency may not be able to protect the information under CIPSEA unless it is a statistical agency (see part G). In these situations, nonstatistical agencies should use their existing statutory authority to protect the confidentiality of this information.

Generally, the applicable statute with the strongest confidentiality protections for the information governs the use and disclosure of the information. CIPSEA does not restrict or diminish any other confidentiality protections or penalties for unauthorized disclosure that an agency may otherwise have for information collected for statistical purposes.[32] Accordingly, if an agency has any stronger protections in its statutes, these protections would remain in effect. For example, the more restrictive use and disclosure provisions of the Census Act and the International Investment and Trade in Services Survey Act would take precedence over the broader statistical uses permitted under CIPSEA. In another example, if an agency's authorizing statute prohibited disclosure with informed consent, the agency would not be able to disclose the information with informed consent, which could be permissible under CIPSEA under certain circumstances.[33]

On the other hand, if an agency pledges to use the information for only statistical purposes, then the agency shall not use any other authorities it has available to use the information for non-statistical purposes, because those uses would be contrary to the agency's pledge. For example, if information is protected by CIPSEA and the Privacy Act, some of the routine uses permitted under the Privacy Act would no longer be allowed because they are not for statistical purposes.

G. Use of CIPSEA by Statistical and Nonstatistical Agencies or Units

Although any Federal agency can acquire and protect information under CIPSEA, CIPSEA provides additional authority and imposes additional requirements on statistical agencies or units. These additional provisions have implications for how and whether an agency can use CIPSEA to acquire information; these provisions are discussed in later sections of this guidance.

CIPSEA defines a statistical agency or unit as ''an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.'' [34]

OMB shall determine whether an agency or unit can be considered a statistical agency or unit for purposes of CIPSEA.

OMB recognized 12 statistical agencies or units in its 1997 Confidentiality Order: [35]

- Department of Agriculture
  - Economic Research Service
  - National Agricultural Statistics Service
- Department of Commerce
  - Bureau of Economic Analysis
  - Census Bureau
- Department of Education
  - National Center for Education Statistics
- Department of Energy
  - Energy Information Administration
- Department of Health and Human Services
  - National Center for Health Statistics
- Department of Justice
  - Bureau of Justice Statistics
- Department of Labor
  - Bureau of Labor Statistics
- Department of Transportation
  - Bureau of Transportation Statistics
- Department of the Treasury
  - Statistics of Income Division of the Internal Revenue Service
- National Science Foundation
  - Division of Science Resources Statistics

Since this guidance was issued in proposed form in October 2006, OMB has recognized two statistical organizational units: the Office of Applied Studies within the Substance Abuse and Mental Health Services Administration in the Department of Health and Human Services, and the Microeconomic Surveys Unit of the Board of Governors of the Federal Reserve. Other agencies or units that wish to be recognized as statistical agencies or units for purposes of CIPSEA must send a request to the Chief Statistician at OMB. The request must come from the head of the agency or unit and have the concurrence of the larger organization within which the agency or unit resides. This request should include a statement of the organizational definition of the agency or unit, its mission, statistical activities, and any nonstatistical activities, and demonstrate that its activities are predominantly statistical. Statistical activities include the collection, compilation, processing, or analysis of data for the purpose of describing the characteristics of groups or making estimates concerning the whole or relevant groups, or components within, the economy, society, or the natural environment. Statistical activities also include the development of methods or resources that support these activities, such as measurement methods, models, statistical classifications, or sampling frames. A listing of OMB recognized statistical agencies and units will be posted and maintained on OMB's Web site.

Both statistical and nonstatistical agencies can use CIPSEA to protect information they acquire directly from

[29] Sec. 502(5)(B).

[30] Sec. 502(6).

[31] Sec. 502(2).

[32] Sec. 504(h); Sec. 512(b)(3).

[33] Sec. 512(b).

[34] Sec. 502(8).

[35] 62 FR 35,044–35,050.

respondents, including State and local governments. However, only statistical agencies or units are authorized under CIPSEA to designate agents to perform exclusively statistical activities, which include data collection, subject to CIPSEA limitations and penalties.[36] Because data collection contractors are agents under CIPSEA,[37] only statistical agencies may designate contractors to acquire information that will be protected under CIPSEA. In order for the collections of nonstatistical agencies to fall within the protections of CIPSEA, nonstatistical agencies must acquire the information themselves directly from respondents. Nonstatistical agencies cannot empower contractors or other agents to acquire information or carry out any other statistical activities for the agency under CIPSEA.[38]

The following sections II and III of this guidance describe in detail the requirements for all agencies using CIPSEA. Additional requirements for statistical agencies or units designating agents are covered in section IV. Because it is generally expected that statistical agencies or organizational units will be collecting information for exclusively statistical purposes under a pledge of confidentiality, statistical agencies or units that conduct or sponsor a collection that will not be for exclusively statistical purposes must follow additional requirements as described in section V. Additional requirements for nonstatistical agencies or units are provided in section VI.

II. Requirements for Agencies Collecting or Acquiring Information Protected Under CIPSEA

CIPSEA provides strong protection for information obtained for exclusively statistical purposes under a pledge of confidentiality. For CIPSEA to have its intended effect of reinforcing public confidence in Federal confidentiality pledges, all Federal agencies that make the CIPSEA pledge must provide CIPSEA protection to that information. A Federal agency should not make a CIPSEA pledge unless the agency is fully committed to taking all the actions that are necessary to provide CIPSEA level protection; making the CIPSEA pledge means giving CIPSEA level protection to the collected information.

To faithfully maintain this commitment requires that agencies meet a number of minimum requirements that are described in detail in the remainder of this guidance. Specifically, agencies must:

- Inform the respondents about the confidentiality protection and use of the information (section II.);
- Collect and handle confidential information to minimize risk of disclosure, including properly training employees (section III.);
- Ensure the information is used only for statistical purposes (section III. A.);
- Review information to be disseminated to prevent identifiable information from being reasonably inferred by either direct or indirect means (section III. F.); and
- Supervise and control agents who have access to confidential information (section IV.).

A. Requirements for Public Notice Prior to Data Collection

Agencies are required under the PRA to:

- Publish a notice in the **Federal Register** allowing 60 days for the public to comment on information collections and otherwise consult with members of the public and affected agencies concerning each proposed collection of information; [39]
- Publish a notice in the **Federal Register** at the time OMB approval is being sought, and allow the public 30 days to comment; and
- ''Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy'' in their PRA supporting statements submitted to OMB.[40]

When agencies are acquiring information that will be protected under CIPSEA, they shall: [41]

- State that the information will be protected under CIPSEA, and cite any other authority they have to protect the confidentiality of the data in their PRA supporting statements; and
- State in their **Federal Register** notices if there is a substantive change in the confidentiality protection of the information being collected, such as using CIPSEA to protect the information for an ongoing collection when similar protection was not available previously.

B. Requirements for Informing Respondents at the Time of Information Collection

At the time of the information collection, agencies are required under the PRA to adequately inform potential respondents about the uses of the information they provide.[42] This description must include the following information related to the confidentiality of their responses:

- The reasons the information is planned to be and/or has been collected;
- The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; and
- The nature and extent of confidentiality protection to be provided, if any.[43]

When agencies are collecting information that they want to be protected under CIPSEA, they are required by law at the time of collection to do the following:[44]

- Pledge to keep the data or information confidential, and
- Pledge that the information will be used for exclusively statistical purposes.

Agencies that are not protecting information under CIPSEA must ensure that the public is able to distinguish easily between pledges that reflect the protections provided by CIPSEA and those affording less protection than CIPSEA. In particular, the pledge for collections not protected to the extent afforded by CIPSEA shall not contain all the elements related to CIPSEA found in the pledges below—specifically, the pledge shall not state both that the data are confidential and that they are for exclusively statistical use (in such cases CIPSEA would apply even if not stated).[45] The degree to which the

[36] Sec. 512(d).

[37] Sec. 502(2)(iii).

[38] Some nonstatistical agencies may have specific statutory authority to designate agents that meets the requirements of CIPSEA, allowing the agency to use agents to perform exclusively statistical activities, including data collection, for the agency. Agencies should consult with OMB on the applicability of their statute for purposes of using CIPSEA before making plans to designate agents. Agencies should also clearly describe how their authority meets the requirements for CIPSEA designation of agents in their information collection requests to OMB.

[39] 5 CFR 1320.8(d)(1).

[40] Instructions for Supporting Statement for Paperwork Reduction Act submissions and 5 CFR 1320.8(b)(3).

[41] Agencies conducting an OMB-approved information collection prior to passage of CIPSEA or issuance of this guidance, such as a periodic or longitudinal survey, can also protect that collection under CIPSEA if the collection is intended for exclusively statistical purposes, the agency pledges confidentiality, and the agency will follow this guidance in implementing CIPSEA. In this case, the agency should consult with OMB about the change in confidentiality protection for the collection and plan appropriate consultation with stakeholders and respondents. OMB may require agencies to provide **Federal Register** notices concerning the change in policy and to contact respondents for comments before the agency can make a CIPSEA pledge.

[42] 5 CFR 1320.8(b)(3); Additional requirements are imposed if the collection involves a Privacy Act system of records (5 U.S.C. 552a(e)(3) as amended).

[43] 5 CFR 1320.8(b)(3).

[44] Sec. 512(a).

[45] As noted at the end of this subsection (and in footnote 17), CIPSEA does not restrict or diminish any other confidentiality protections or penalties for unauthorized disclosure that an agency may otherwise have for information collected for

Continued

pledge differs from the CIPSEA pledge needs to be based on the laws and regulations governing the collection and determined in collaboration with the agency legal staff, agency confidentiality officer, and PRA clearance officer. A pledge of confidentiality for collections not protected by CIPSEA must specifically cite the statutory authorization protecting the confidentiality of the data being collected and accurately describe the extent of that protection. If an agency elects to collect information under laws affording less protection than CIPSEA, OMB will not approve an agency's proposed non-CIPSEA pledge that is too similar to the CIPSEA pledge (*e.g.*, one that includes the term 'confidential' and states that the information will be used for exclusively statistical purposes).

The following examples of confidentiality pledges under CIPSEA are sufficient to inform respondents of the protections afforded. Agencies shall use the following model and customize the wording in accordance with their needs. Parentheses indicate options and italics are instructions. Comparable pledge language may be substituted, but that alternative wording shall be included in the PRA supporting statements to OMB and should be cognitively tested. A complete confidentiality pledge shall be developed from the following:

The information (*choose one*—you, your household, your establishment—*as needed*) provide(s) will be used for statistical purposes only. In accordance with the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107–347 (*option to add or substitute laws that are stronger or more restrictive than CIPSEA*) and other applicable Federal laws *(option to list them, but it is not necessary to be exhaustive)*, your responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees (*option to add* ''or agents'' *if applicable, or another term the agency uses*) *(option to add*—without your consent).[46] By law, every (your agency here) employee *(optional*—including the Director*)*, (*if applicable, option to add* ''as well as every agent such as *then list as appropriate*—contractors, field representatives, telephone interviewers, authorized researchers,[47] *etc''*.[48]*), (optional*—has taken an oath and*)* is subject to a jail term *(optional*—of up to 5 years*)*, a fine *(optional*—of up to $250,000*)*, or both if he or she willfully discloses ANY identifiable information about *(choose one*—you, your household, your establishment*)*.

The above pledge may be placed on the survey instrument (*e.g.*, form), in the instructions, or on the back side of the cover letter. A shorter, more user-friendly version may be used in introductory statements, on the cover of the instrument, or in the body of the cover letter as long as there is a reference to the full pledge. In addition, the agency may place the full pledge on the agency's web site and point respondents to that site.

To illustrate the actual pledge wording, an agency could implement this pledge as follows:

The information you provide will be used for statistical purposes only. In accordance with the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107–347 and other applicable Federal laws, your responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or agents. By law, every ABC employee as well as every agent has taken an oath and is subject to a jail term of up to 5 years, a fine of up to $250,000, or both if he or she willfully discloses ANY identifiable information about you.

Agencies may choose to employ a shortened version of the pledge, such as the following, when conducting telephone surveys or in other similar circumstances as long as respondents are given access to the longer version in some other manner such as posting on the agency's Web site:

The information you provide about *(choose one*—yourself, household, establishment*)* will be used for statistical purposes only. In accordance with the Confidential Information Protection provisions in Public Law 107–347 *(option to add* and other applicable Federal laws*)*, your responses will be kept confidential and will not be disclosed in identifiable form *(optional*—without your consent).[49] By law, everyone working on this *(your agency here)* survey is subject to a jail term, a fine, or both if he or she willfully discloses ANY information that could identify you.

Agencies whose statutory authority provides confidentiality protections more restrictive than CIPSEA for information acquired for exclusively statistical purposes under a pledge of confidentiality may use the CIPSEA pledge or their existing pledges that are similar as long as they make clear what confidentiality protections cover the information and the statutory authority for those protections. In such cases, the resemblance of an agency's pledge to the CIPSEA pledge does not imply that any provisions in CIPSEA would overrule the agency's stronger confidentiality statute. CIPSEA does not restrict or diminish any other confidentiality protections or penalties for unauthorized disclosure that an agency may otherwise have for information collected for statistical purposes, and any stronger protections would remain in effect.[50]

III. Minimum Standards for Safeguarding Confidential Information Acquired Under CIPSEA

These standards for safeguarding confidential information apply to information protected under CIPSEA. Federal agencies shall follow the minimum standards in this section. In addition, some best practices are provided that agencies are encouraged to adopt but are not required to implement.[51]

The central objective of these standards is to ensure that a Federal agency that pledges confidentiality for statistical information honors that pledge. Each Federal agency remains ultimately responsible and accountable for the confidential information that the agency acquires under a CIPSEA pledge. Any inappropriate use or disclosure of CIPSEA-protected information violates the law and can undermine public trust. Therefore, there is no ''acceptable'' level of non-compliance with the CIPSEA pledge.

These minimum standards have been developed according to the principle of disclosure risk, which considers both the probability of an unauthorized disclosure and the expected harm from such a disclosure. These minimum standards apply to data for which the disclosure risk has been deemed relatively low by the Federal agency responsible for the information. Federal agencies shall set higher standards as the disclosure risk increases.

At a minimum, such standards shall make clear that each person having

statistical purposes, and any stronger protections would remain in effect (Sec. 504(h); Sec. 512(b)(3)).

[46] Use the phrase ''without your consent'' only in cases where an agency can reasonably anticipate such consent will be requested.

[47] Agencies that plan to provide access to confidential information for statistical purposes should include mention of this in their pledge.

[48] Designated statistical agencies (as defined under CIPSEA Subtitle B) may include ''employees of partner statistical agencies'' for collections of confidential business information that may be used in data sharing agreements as authorized under that Subtitle.

[49] Use ''without your consent'' only if consent is asked or may be in the future—omitting this phrase could create difficulties if the agency later wants to ask for consent.

[50] Sec. 504(h); Sec. 512(b)(3).

[51] Best practices that agencies are encouraged but not required to implement are designated as items that agencies ''may'' do, while requirements are noted as items that agencies ''shall'' do.

access to confidential information understands his/her responsibility related to maintaining the confidentiality of that information. In addition, these standards shall make clear who is accountable for each part of the information protection, including:

- Determining and monitoring procedures for collection and release;
- Evaluating the reason for accessing the information and controlling access to the information; and
- Maintaining physical and information systems security.

A. Principles and Procedures for Protecting Confidential Information

Agencies or organizational units protecting information under CIPSEA shall incorporate the costs for protecting confidential information throughout the lifecycle of the statistical activity. This will ensure that sufficient resources are available to develop and implement procedures to ensure that:

- The confidentiality of the information is protected;
- Confidential information is used exclusively for statistical purposes;
- Access to confidential information is controlled, and only authorized persons have access to the information;
- All persons having access to confidential information understand
  - The obligations of confidentiality protection,
  - That unauthorized access to confidential information is prohibited, and
  - The penalties for unauthorized access to and unauthorized use of confidential information; and
- A person or persons are designated to oversee all procedures for handling confidential information, and that such persons are responsible for all agency confidentiality procedures, reviews, and compliance with confidentiality laws.

B. Physical and Information Systems Security

Each agency shall ensure the physical security and information systems security where data protected under CIPSEA are accessed and stored.

Agencies are required to establish appropriate administrative and technical safeguards to ensure the security of all media containing confidential information is protected against unauthorized disclosures and anticipated threats or hazards to their security or integrity. For example, agencies must ensure that security requirements are followed for reports, documents, printouts, information collection instruments, laptops, PDA's, zip drives, floppy disks, CD–ROMs, or any other IT devices that contain confidential information to prevent access by unauthorized persons. Agencies must also ensure that only persons authorized by the head of the statistical agency or unit are permitted access to confidential information stored in information systems.

Agencies are required to assess and secure their information and information systems in accord with the Federal Information Security Management Act (FISMA) which appears as Title III of the E-Government Act of 2002. OMB has issued guidance on implementing FISMA, and the National Institute of Standards and Technology (NIST) has issued compulsory and binding standards used to identify the level of impact and controls for maintaining the confidentiality, integrity, and availability of all information collected or maintained on behalf of an agency.[52]

One of three security objectives for information and information systems that FISMA defines is confidentiality. The security category of an information type is determined by its potential impact on agencies should there be a breach of security, i.e., a loss of confidentiality.[53] Because agencies handle many different types of information, an agency should determine what the potential impact of a security breach on the agency is (including mission, function, image, and reputation), and take into account CIPSEA requirements that the information be used for exclusively statistical purposes as well as the penalties that CIPSEA imposes for disclosure.

Privacy Impact Assessments (PIAs) are also required of agencies developing or procuring information systems or projects that maintain or handle confidential information in identifiable form about members of the public, and agencies initiating new electronic collections of information in identifiable form.[54]

C. Confidentiality Training

Each agency with information protected under CIPSEA shall ensure that all individuals having access to such confidential information have a current understanding of confidentiality rules and procedures. Confidentiality training shall include at a minimum:

- An overview of information protection procedures,
- The importance of ''need to know'' for an authorized purpose in accessing confidential information,
- Physical and information systems security procedures, and
- The penalties for unauthorized access, use and disclosures.

Employees who have access to confidential information shall be recertified annually to ensure their understanding of confidentiality requirements.

D. Record Keeping

Agencies shall establish and maintain a system of records[55] that identifies individuals accessing confidential information. Agencies shall also be prepared to document their compliance with the safeguard principles to OMB.[56]

E. Information Collection, Processing, or Analysis Contracts

Prior to award, agencies shall review any contracts that involve CIPSEA protected information to ensure language is included that informs the contractor of the requirements of CIPSEA and of the contractor's obligations under the law and penalties for noncompliance (see Section IV).

F. Guidelines for Review of Information Prior to Dissemination

For CIPSEA protected information, the agency as well as any agent accessing the information shall ensure that any dissemination of information based on confidential information is done in a manner that preserves the confidentiality of the information. To accomplish this, agencies shall:

- Review their information products prior to public release for disclosures of confidential information, and
- Apply appropriate statistical disclosure limitation (SDL) techniques

[52] For more information about existing security and privacy requirements, see *http://www.whitehouse.gov/omb/inforeg/infopoltech.html,* FIPS PUB 199, *Standards for Security Categorization of Federal Information and Information Systems,* Gaithersburg, MD:U.S. Department of Commerce, and related publications.

[53] See FIPS PUB 199, *Standards for Security Categorization of Federal Information and Information Systems,* Gaithersburg, MD:U.S. Department of Commerce; and related publications such as NIST Special Publication 800–60.

[54] See OMB Memorandum M–03–22, September 26, 2003, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002.*

[55] Agencies should assess for themselves the nature of these records and requirements for record keeping, including whether what an agency does for this purpose qualifies as a system of records under the Privacy Act. OMB is not implying in this guidance what form these record keeping systems should take and is leaving that determination to the agency.

[56] OMB recognizes that in some cases agencies have very detailed documentation on access to confidential information that itself is treated as confidential by the agency. In this case, it is sufficient for the agency simply to demonstrate that the basic safeguard principles are being followed; agencies should not reveal specific individuals or specific procedures that would compromise the protection of the information.

to preserve the confidentiality of the information.

For further guidance on SDL techniques, agencies can refer to practices described in *Statistical Policy Working Paper #22, Report on Statistical Disclosure Limitation Methodology*[57] and utilize other resources such as the disclosure review checklist provided by the Federal Committee on Statistical Methodology's Confidentiality and Data Access Committee.[58]

Additional guidelines are provided below for handling confidential information protected under CIPSEA in conjunction with information not protected by CIPSEA.

Tabular Information

When a table includes both data protected under CIPSEA and other data not protected under CIPSEA, all data shall be treated as confidential, and identifiable respondent information shall not be present in the table.

When a table includes both data protected under CIPSEA and nonconfidential data, the agency:

- Shall apply SDL techniques to ensure protection of any table cells based on information protected under CIPSEA;
- May have a table cell that reveals nonconfidential identifiable respondent information. However, the agency shall take special care to ensure that the presentation of the nonconfidential information in no way jeopardizes confidential information.
  - If the table includes any identifiable nonconfidential respondent information, the agency shall distinguish what information is protected under CIPSEA in the accompanying text or notes to the table.
  - If the table does not include any identifiable nonconfidential respondent information, there is no need to distinguish these data from those protected under CIPSEA.
- A special case exists when a table cell value reflects a combination of CIPSEA protected data and nonconfidential data (*e.g.*, a ratio or weighted average). In this case, these data elements are considered confidential and shall not be disseminated in a manner where any respondent could be identified.

The agency shall determine how the disclosure limitation methods used on the data affect the users and thus what information about confidentiality protection shall be included with tabular presentation.

Microdata[59]

The confidentiality provisions and limits on uses of microdata shall be completely discussed in the documentation or mentioned with a reference for details. For microdata protected under CIPSEA, SDL techniques shall be applied prior to public release.

There are two possible scenarios to consider for the dissemination of microdata in which some elements are protected under CIPSEA and other elements are not (*e.g.,* not confidential or confidential under other laws/authorities).

- If variables protected under CIPSEA are linked to other variables that are not, the most restrictive law (in terms of promising confidentiality and limiting the use of the information) shall apply. For example:
  - If an agency links data protected under CIPSEA with nonconfidential administrative data from another source and releases a linked public use microdata file, the restrictions of CIPSEA apply.
  - If an agency links data protected under CIPSEA with confidential administrative data from another source (*e.g.*, IRS data) and releases a linked public use microdata file, the most restrictive law (in terms of promising confidentiality and limiting the use of the information) shall prevail.
- If data from some respondents are protected under CIPSEA and data from other respondents are not, an agency may keep the data in separate files or combine the data sets and include a variable that tells the source for each record. Keeping the data in separate files may be the best choice because it would help highlight the difference in confidentiality provisions and limits on uses.

IV. Requirements and Guidelines for Statistical Agencies or Organizational Units When Designating Agents to Acquire or Access Confidential Information Protected Under CIPSEA

Statistical agencies or organizational units may under CIPSEA designate agents by contract or by entering into a special agreement to perform exclusively statistical activities that are subject to CIPSEA limitations and penalties.[60] To ensure that the protections of CIPSEA apply to the information that a statistical agency or unit acquires, the agency shall follow the requirements in this section when designating agents to acquire information for the agency for exclusively statistical purposes under a pledge of confidentiality.

Because CIPSEA has a broad definition of agents, statistical agencies and organizational units may use CIPSEA to designate a variety of individuals as agents to allow them to access confidential information for exclusively statistical purposes.[61] A statistical agency may designate agents to perform exclusively statistical activities, at its discretion, subject to the agency's needs, resources, and other requirements. The agency that possesses the confidential information shall ensure that all agents comply with the agency's confidentiality procedures and shall follow the requirements in this section when designating agents to access confidential information for exclusively statistical purposes.

Information protected under CIPSEA must be used only for statistical purposes. When entering into contracts or special agreements with agents to acquire or access confidential information, an agency shall consider:

- The sensitivity of the confidential information,
- The risk of disclosure, and
- The resources required to maintain supervision and control of agents.

Agencies are responsible for protecting the confidentiality of their data and may establish standards beyond those in this guidance. This section thus provides the minimum requirements as well as additional guidelines for statistical agencies or units to designate agents to perform exclusively statistical activities, including data collection.

It is important to note that neither CIPSEA nor this guidance requires any statistical agency or unit to designate agents; the decision to enter into these agreements is at the discretion of the statistical agency or unit. Therefore, an agency may decline to designate agents in accordance with its authorities or practices.[62] If a statistical agency or unit chooses to designate agents, the agency remains responsible for all confidential information protected under CIPSEA, and statistical agencies or units should not designate agents unless the agencies

[57] Available at *http://www.fcsm.gov/reports/.*

[58] See *http://www.fcsm.gov/committees/cdac/cdac.html.* Agencies may also wish to consult HIPAA standards for deidentification of protected health information at 45 CFR 164.514.

[59] Microdata are data about individual respondents (*e.g.*, persons, households, organizations, companies, farms, etc.)

[60] Sec. 512(d).

[61] Sec. 512(a).

[62] An example is the authority granted the Census Bureau under Title 13, Section 23(c) that permits the use of temporary staff to assist in the performance of work authorized by Title 13. Whereas CIPSEA puts no limits on the statistical uses made by agents, Title 13 limits the statistical uses to those that support the work of the agency.

or units are able to ensure that all CIPSEA requirements in this guidance will be met and faithfully carried out by their agents. Carrying out these responsibilities will take agency resources, and thus, will limit the extent to which a statistical agency or unit should consider designating agents.

A. Designating Agents

Under CIPSEA, a statistical agency or unit may designate as an agent[63] any of the following:

- An employee of a private organization or a researcher affiliated with an institution of higher learning;
- Someone who is working under the authority of a government entity;
- Someone who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor; or
- Someone who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this title.[64]

Statistical agencies or units designating agents must do so through contracts or other agreements that require the agent to agree in writing to comply with all provisions of law that affect information acquired by that agency.[65] Any statistical agencies or units that designate agents shall exercise supervision and/or control of the agents to ensure the confidentiality and appropriate use of the information.

B. Requirements for Agents To Request Access to Confidential Information Protected Under CIPSEA

Some statistical agencies and units receive requests from outside researchers and others who wish to obtain access to confidential data for statistical purposes as agents of the statistical agency. Most agencies that receive these kinds of requests have found it useful to first obtain a written proposal from the prospective agent. Agencies may require prospective agents to submit a proposal that includes some or all of the following in order to properly evaluate the proposed access and use of their confidential data:

- A clear and detailed description of the purpose of the access,
- The specific confidential information needed,
- How the information will be used,
- Plans for disseminating information as well as the products planned for public distribution,
- A list of persons involved in the project who will have access to the information,
- A security plan (information systems and physical security) for protecting the information [applicable only for off-site access arrangements], and
- A timeframe for access.

After an agency receives the proposal and reviews it, the agency may provide comments and may request changes or may request the prospective agent to complete a written agreement (see section IV.C).[66] Agencies shall deny any proposal that does not meet the requirements described in this guidance.

Whether or not a prospective agent has submitted a proposal to an agency, access to confidential information shall not be granted until the agency has entered into a written agreement with the agent, and the agent has met the requirements contained in this guidance and in agency standards for accessing the data.

Prior to the enactment of CIPSEA, some statistical agencies and units had statutory authority to authorize agents to access confidential information. Agencies have developed a variety of mechanisms that balance permitting access to confidential data, while controlling that access. This area is evolving rapidly, and the following examples are included only as illustrations:

- *Onsite at Agency:* An external analyst works at an agency as an agent to participate in statistical activities involving confidential data. This work shall be done either in collaboration with or otherwise under the direct control and supervision of agency staff, per the terms of a written agreement. The agent's work is subject to review by the supervising staff.
- *Data Center:* An agent visits a controlled access secure facility maintained by the agency or unit to conduct analyses on confidential data held by the agency. The facility must be equipped with secure computers and staffed by agency personnel who review all outputs for the purposes of confidentiality. There may be additional constraints on what the agent may bring to or remove from the center.
- *Off-site License Agreement:* An agent is granted access to confidential information from an agency or unit for use at the agent's facility. The organization the agent is affiliated with shall enter into a legally binding written agreement as described in section IV.C with the agency that possesses the confidential information.

C. Written Agreements for Agent Access to Confidential Information Protected Under CIPSEA

Some statistical agencies or units use contractors to acquire information and/or perform other statistical activities. Under CIPSEA, the contractor and the contractor's employees are considered agents. For any data that will be acquired by the contractor under CIPSEA, or if the contractor will have access to any confidential information protected by CIPSEA, the legally binding contract shall include the provisions shown in the Appendix.

If a statistical agency or unit provides designated agents access to confidential information protected under CIPSEA for exclusively statistical purposes, then all such access shall require a written, legally binding contract or other agreement between the agency and the responsible management level official from the institution with which the agent(s) is(are) affiliated.[67] The information required as part of that written agreement is shown in the Appendix.

D. Physical and Information Systems Security for Confidential Information Protected Under CIPSEA: On-Site and Off-Site

Agencies have the responsibility to ensure the security of physical and information systems for on-site as well as off-site access (if applicable) to confidential information and must follow applicable OMB Guidance and NIST standards and publications.[68] In addition to the security requirements described in section III.B, agencies allowing agents access to confidential information protected under CIPSEA

[63] Sec. 502(2)(A); Sec. 512(d).

[64] CIPSEA includes as agents contractors maintaining systems for handling or storage of data. Such information technology personnel provide support and have direct contact with confidential information not because they would necessarily use the information for statistical purposes, but because they would be responsible for the protection of the information from use for nonstatistical purposes and for ensuring appropriate security. As agents, these contractors and their employees are bound by CIPSEA to protect the confidentiality of the information.

[65] Sec. 502(2)(B).

[66] If the agency chooses, the agent may submit the proposal in conjunction with a completed written agreement.

[67] For situations in which agents are not affiliated with an institution, the agreement will be signed as legally binding by the agent(s). The latter arrangements would include those with a single agent operating independently as a sole proprietor as well as those with multiple agents operating independently.

[68] For more information about existing security and privacy requirements, see *http://www.whitehouse.gov/omb/inforeg/infopoltech.html*, FIPS PUB 199, *Standards for Security Categorization of Federal Information and Information Systems*, Gaithersburg, MD:U.S. Department of Commerce, and related publications.

outside of the collecting agency or a facility under the agency's control shall require that the written access agreement, described in section IV.C, stipulate the agency's right to conduct inspections of the off-site facility.

In order to ensure the physical and information systems security of the confidential information, agencies shall conduct inspections of any off-site facility that harbors confidential information protected under CIPSEA. (If the off-site facility is another Federal statistical agency or unit, agencies may at their option conduct inspections but are not required to inspect these facilities.) These inspections shall be conducted according to the following principles:

- The inspections shall assess and document whether the protection procedures outlined in the written agreement and in the agent's security plan are being implemented.
- While an inspection of the off-site facility is encouraged prior to release of the information to the agent, it is not required. (The inspection may occur any time during the access agreement period, preferably as soon as possible.)
- Inspections shall be conducted at all off-site facilities at some time during the timeframe of access. Agencies may prioritize their selection of sites for inspections based on risk, but must still inspect all off-site facilities; however, agencies may coordinate and collaborate on inspections of off-site facilities that harbor confidential data from multiple agencies. Agencies may choose not to inform the agent of the timing of such inspections.

E. Confidentiality Training

All persons with access to confidential information protected under CIPSEA shall participate in agency-provided confidentiality training (see section III.(C) prior to accessing the confidential information as stipulated in the written agreement (section IV.C) between the agency and the agent's organization or institution.[69]

The agency possessing the confidential data shall certify or receive notification that each project staff member has undergone the training. Agents shall also be required to be recertified annually.

F. Record Keeping

Agencies shall establish and maintain a system of records[70] that identifies designated agents accessing confidential information protected under CIPSEA and the project for which the information was authorized.

V. Requirements for Statistical Agencies or Organizational Units Acquiring Information That May Be Used for Nonstatistical Purposes

CIPSEA defines a statistical agency or unit to be ''an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.'' [71]

Because the public should expect that a statistical agency or unit will be collecting information for exclusively statistical purposes, CIPSEA requires a statistical agency to ''clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide notice to the public, before the data or information is collected, that the data or information could be used for nonstatistical purposes.'' [72]

A. Requirements for Public Notice

If a statistical agency or unit will collect information that may be subject to use for nonstatistical purposes, the statistical agency or unit shall use the notices in the **Federal Register** that are required under the PRA to inform the public about the nonstatistical uses of the information during the process of requesting OMB approval of the information collection.

As noted in section II.A, OMB's regulations for Controlling Paperwork Burdens on the Public[73] set forth public notification requirements for agencies conducting or sponsoring an information collection. Agencies are required under the PRA to:

- Publish a notice in the **Federal Register** allowing 60 days for the public to comment on information collections and otherwise consult with members of the public and affected agencies concerning each proposed collection of information; [74]
- Publish a notice in the **Federal Register** at the time OMB approval is being sought, and allow the public 30 days to comment; and
- ''Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy'' in their PRA supporting statements submitted to OMB.[75]

Both **Federal Register** notices (*i.e.*, the initial one seeking public comments for consideration by the agency and the later one seeking public comments for consideration by OMB) must explicitly address what information the statistical agency or unit plans to collect that may be used for nonstatistical purposes.

B. Requirements for Informing and Making Pledges to Respondents

As noted in section II.B, at the time of the information collection, agencies are required under the PRA to adequately inform potential respondents about the uses of the information they provide.[76]

This description must include the following information related to the confidentiality of their responses:

- The reasons the information is planned to be and/or has been collected;
- The way such information is planned to be and/or has been used; and
- The nature and extent of confidentiality to be provided, if any.[77]

The statistical agency or unit must clearly explain the confidentiality provisions, if any, for all information not protected under CIPSEA. As appropriate, the explanation shall include:

- What information will be treated as confidential and the basis (*e.g.*, laws) for any confidentiality pledge;
- What information will be treated as nonconfidential;
- What information, if any, is limited to use for exclusively statistical purposes and the agency's basis (*e.g.*, laws) for such assurances;
- What information, if any, is not limited to use for exclusively statistical purposes and may be used for nonstatistical purposes; and
- Any limitations on the confidentiality provisions (*e.g.*, the information will be kept confidential only to the extent that it satisfies a criterion for exemption in the Freedom of Information Act (FOIA), the information may be shared with other Federal government agencies for official uses, etc.).

Agencies must ensure that the public is able to distinguish easily between their CIPSEA pledge and any non-CIPSEA pledge covering information

[69] For situations in which agents are not affiliated with an institution, the agreement will be signed as legally binding by the agent(s).

[70] Agencies should assess for themselves the nature of these records and requirements for record keeping, including whether what an agency does for this purpose qualifies as a system of records under the Privacy Act. OMB is not implying in this guidance what form these record keeping systems should take, and is leaving that determination to the agency.

[71] Sec. 502(8).

[72] Sec. 512(c).

[73] 5 CFR 1320.

[74] 5 CFR 1320.8(d)(1).

[75] Instructions for Supporting Statement for Paperwork Reduction Act submissions and 5 CFR 1320.8(b)(3).

[76] 5 CFR 1320.8(b)(3); Additional requirements are imposed if the collection involves a Privacy Act system of records (5 U.S.C. 552a(e)(3) as amended).

[77] 5 CFR 1320.8(b)(3).

that will be used for nonstatistical purposes. The degree to which the pledge differs from the CIPSEA pledge needs to be based on the laws and regulations governing the collection and determined in collaboration with the agency legal staff, agency confidentiality officer, and PRA clearance officer. The pledge shall be in compliance with section 512(c) of CIPSEA—requiring notice that any data could be used for nonstatistical purposes. The approach a statistical agency or unit uses in crafting wording for confidentiality pledges for information not protected under CIPSEA must be done with care and take into account the laws governing the particular agency, and the agency is strongly encouraged to test changes from currently used wording. In particular, the pledge for collections not protected under CIPSEA (because, for example, the information would be used for nonstatistical purposes) shall not contain all the elements related to CIPSEA found in the pledges given in section II—for example, the pledge shall not state both that the data are confidential and that they are for exclusively statistical use (in such cases CIPSEA would apply even if not stated).

For example, a pledge for data that are legally permitted to be accessed for nonstatistical purposes may state:

> The information you provide will be protected to the fullest extent allowable under (name the law). This law allows for the (name specific nonstatistical uses). Information will be protected from public disclosure by (your agency). Results from this survey will be reported publicly only in statistical summaries, so that individuals cannot be identified.

To illustrate the actual pledge wording, an agency could implement this pledge as follows:

> The information you provide will be protected and will not be disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, and the Trade Secrets Act, 18 U.S.C. Sec. 1905.

To ensure public understanding and avoid confusion (about whether the agency will provide CIPSEA protection to the data), the above pledges do not use the word ''confidential'' because use of this term could give rise to confusion.

VI. Requirements and Guidelines for Nonstatistical Agencies or Units Acquiring and Handling Information Protected Under CIPSEA

Nonstatistical agencies seeking to acquire information that will be protected under CIPSEA can take two general approaches: (1) They can directly acquire the information themselves from respondents, or (2) they can enter into an agreement with a statistical agency to acquire the information.

As noted in Section I. G., Subtitle A of CIPSEA may be used by any Federal agency that directly acquires information from respondents for exclusively statistical purposes under a pledge of confidentiality. Nonstatistical agencies that acquire information in this manner must follow all of the requirements in sections II and III of this guidance for confidential information protected by CIPSEA.

Nonstatistical agencies or units that will not collect the information themselves directly from respondents will need to carefully consider their plans for acquiring and using information if they want to use CIPSEA to protect the information. Although nonstatistical agencies and units do acquire information directly from respondents, they frequently use contractors or other agencies to acquire information for them that is used for statistical purposes. CIPSEA did not authorize nonstatistical agencies or units to designate agents, such as contractors, university researchers, or others included within the definition of agents,[78] to perform exclusively statistical activities, including data collection. Because nonstatistical agencies or units are not empowered under CIPSEA to designate agents, who are subject to CIPSEA limitations and penalties, they will not be able to protect the information under CIPSEA if they employ contractors or other agents to acquire the information or if they plan to allow access to the information by anyone outside of authorized agency employees, even if they intend to use the information for exclusively statistical purposes and want to keep it confidential.[79]

As an alternative to collecting the data directly themselves, nonstatistical agencies or units that wish to acquire information with CIPSEA protection may want to consider entering into an agreement with a Federal statistical agency or unit. Because the statistical agency or unit would be responsible for protecting all confidential information acquired under the CIPSEA pledge, carrying out these responsibilities will take resources that non-statistical agencies should be prepared to provide to the statistical agency. Statistical agencies or units may designate agents under CIPSEA, but must follow the requirements in Section IV of this guidance to do so. Employees within a nonstatistical agency or unit may serve as agents for a statistical agency or unit to perform exclusively statistical activities on confidential information and be bound by CIPSEA provided that the statistical agency or unit and the agents have followed all of the requirements given in section IV.

An agreement between the statistical agency and the nonstatistical agency could be used to make the statistical agency or unit responsible for the control of the confidential information. The statistical agency could then designate a contractor to acquire the information and perform other exclusively statistical activities. The statistical agency could also designate as agents select employees of the nonstatistical agency or unit to have access to the information for exclusively statistical purposes. As noted earlier, all requirements in sections II, III, and IV would have to be met; and, therefore, all agents would be subject to penalties under CIPSEA for any disclosure.

VII. Data Sharing Under Subtitle B of CIPSEA

Subtitle B, Statistical Efficiency, provides only for the sharing of business data for exclusively statistical purposes and provides for that sharing only among three statistical agencies designated in Subtitle B. Subtitle B of CIPSEA does not authorize the sharing of confidential business data among any Federal agencies other than the three designated statistical agencies, nor does it authorize any sharing of demographic or other types of data among any Federal agencies.[80]

The following brief guidance in this section applies to the three designated statistical agencies sharing business data. These three agencies are currently working to implement the data sharing provisions of CIPSEA. OMB is working closely with them and may issue additional guidance to these three agencies as needed to implement the data sharing provisions of CIPSEA.

[78] See Sec. 502(2)(A).

[79] Some nonstatistical agencies may have specific statutory authority to designate agents that meets the requirements of CIPSEA, allowing the agency to use agents to perform exclusively statistical activities, including data collection, for the agency. Agencies should consult with OMB on the applicability of their statute for purposes of using CIPSEA before making plans to designate agents. Agencies should also clearly describe how their authority meets the requirements for CIPSEA designation of agents in their information collection requests to OMB.

[80] Although CIPSEA Subtitle B only authorizes the sharing of confidential business information among BEA, BLS, and the Census Bureau, CIPSEA did not alter other existing authorities for data sharing among Federal agencies (see Sec. 504(a)).

A. Designated Statistical Agencies

The three designated statistical agencies permitted by Subtitle B to share business data for exclusively statistical purposes are the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics.[81]

B. Requirements When the Designated Statistical Agencies Share Data

Prior to sharing any business data under CIPSEA, the designated statistical agencies shall inform respondents about their intentions to share the business data. If, prior to collection, the designated agencies anticipate that they will share business data, the agencies shall:

- Include in their **Federal Register** notices required under the PRA notification that the business data may be shared with designated statistical agencies, and
- Also include in their CIPSEA confidentiality pledges notification that the data may be shared with designated statistical agencies.

When a designated statistical agency plans to share data that was collected under a legal requirement to supply the information without notice of the intent to share that information with one or more designated statistical agencies, the agency shall publish a notice of the proposed data sharing activity in the **Federal Register** and specify the business data to be shared and the statistical purposes for which the business data are to be used. This notice shall allow a minimum of 60 days for public comment,[82] and a copy of this notice shall be sent to OMB when it is published.

C. Requirements for Written Agreements for Data Sharing Among Designated Statistical Agencies

Designated statistical agencies shall enter into a written agreement before sharing any business data. The written agreement shall specify:

- The business data to be shared;
- The statistical purposes for which the business data are to be used;
- The officers, employees, and agents authorized to examine the business data to be shared; and
- Appropriate security procedures to safeguard the confidentiality of the business data.

A copy of the written agreement shall be provided to OMB ten days prior to execution.

VIII. Annual Reporting and Review Requirements

A. Reporting Requirements

To coordinate and oversee the confidentiality and disclosure policies established under CIPSEA, the Office of Management and Budget is authorized under CIPSEA to require reports and other information regarding the implementation of this legislation by Federal agencies.[83] In order to effectively monitor Federal agencies' use of the different provisions in CIPSEA, all agencies shall report to OMB on (1) The use of the CIPSEA pledge, (2) the use of the CIPSEA agents provision, and (3) data sharing activities under Subtitle B.

Use of the CIPSEA pledge. Any Federal agency acquiring data under CIPSEA Subtitle A shall report to OMB on an annual basis on those collections it has conducted under CIPSEA and affirm that the agency has followed the procedures in this guidance to ensure the confidentiality of the information is protected.

Use of the agents provision in CIPSEA. Statistical agencies and units are authorized under Subtitle A of CIPSEA to designate agents, who may perform exclusively statistical activities, including data collection, and are bound to the same legal requirements as agency employees for maintaining the confidentiality of the information. Statistical agencies or units that choose to designate agents shall report to OMB on an annual basis on the number of agents designated; the kinds of statistical activities performed by agents, *e.g.*, data collection, analysis, etc.; the different types of arrangements for access to confidential information (if applicable), *e.g.*, on-site at the statistical agency, through an agency-controlled research data center, or off-site licensing agreement; and the kind of written agreement that is required for each type of access.

Use of data sharing provisions under Subtitle B of CIPSEA. CIPSEA directs that the three designated agencies shall report annually to the Director of the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions taken to implement the sections of the law on sharing of business data. Designated agency reports shall be prepared on a calendar year basis, and shall include a summary of activities carried out under this law including the statistical purposes for sharing, any anticipated improvements to quality, and any anticipated or achieved reductions in cost or respondent burden due to the sharing of business data. The report shall include copies of each written agreement for the sharing of business data for the applicable year.

The initial report to OMB shall cover any collections since the enactment of the legislation in December 2002 through December 2006, and subsequent reports shall cover a calendar year. Agencies shall submit their initial reports to OMB by May 30, 2007. Subsequent reports shall be submitted annually to OMB by April 30th of each year. Agencies shall also post copies of this report on their Web sites.

B. OMB Review of Agency Rules

Agencies are authorized to promulgate rules to implement CIPSEA.[84] Agencies proposing rules to implement CIPSEA shall submit these proposed rules to OMB for review and approval.[85]

Appendix Requirements for Contracts and Written Agreements for Agents Acquiring or Accessing Confidential Information Under CIPSEA

The following information shall be included in the contract or written agreement:

- The identity and affiliation of both the legally responsible agent (e.g., contractor or requestor seeking access to confidential data) and agency official signing the agreement;
- Whether the agent will be acquiring confidential information on behalf of the agency or only accessing confidential information the agency possesses;
- A clear and detailed description of the purpose of the access;
- The specific confidential information needed;
- How the information will be used;
- Any plans for disseminating information as well as the products planned for public distribution;
- Legally binding signature lines for the agency, and the responsible management level official from the institution with which the agent(s) is (are) affiliated. When the agent is operating independently for these purposes and is unaffiliated with an institution, the agent will sign;
- The legal authority under which the information was collected or acquired;
- The legal authority from CIPSEA and other laws for providing the agent the ability to acquire or to access the information;

[81] Sec. 522.

[82] Sec. 524(d).

[83] Sec. 503.

[84] Sec. 503(b).

[85] Sec. 503(c).

- Penalties for violating confidentiality or unauthorized use of the information;
- The timeframe for access;
- A requirement that the agent provide and update as necessary a list of persons involved in the project who will have access to the information;
- The agent's responsibility to notify agency when
  - The agent no longer needs the information,
  - The agent plans a change in site access, and/or
  - The project purpose changes (agency approval must be obtained first);
- Confidentiality training requirement for all persons who have access to confidential information;
- The requirement that each person with access to confidential information sign a non-disclosure form that signifies an understanding of and agreement to the terms of access and agreement to comply with CIPSEA and any other applicable laws (see below for options on where to include this information);
- The requirement that the agent submit any project information products to the agency for disclosure review (agencies may also include or reference reporting requirements or standards);
- For off-site access arrangements
  - A security plan (information systems and physical security) for protecting the information,
  - Procedures regarding the return or destruction of information when access is no longer necessary (may precede project's end), and
  - The requirement that the agent allows the agency to carry out a physical and IT security inspection of the agent's workplace;
- Conditions requiring modification of the agreement;
- Termination clause for the agreement;
- Listing of contact persons for the agency and the responsible management level official from the institution with which the agent is affiliated. (When the agent is operating independently and is unaffiliated with an institution, the agent will designate a contact person.); and
- As applicable, information on funding of project work, including any between the agency, agent(s), and/or agents' institution.

The following information may be included in the body of the agreement, added to the agreement as appendices, or made part of the agency's official files for the actual agreement:

- Copy of the agency-approved proposal (if required);
- Copies of all laws cited in the agreement;
- The list of persons with access to confidential information;
- Certification that all persons who have access to confidential information have completed confidentiality training;
- Signed non-disclosure forms for all persons with access to confidential information; and
- For each person with data access, a copy of the background certification supporting such access—details to be determined by agency (options could include fingerprinting, a sworn affidavit of nondisclosure, work history checks, etc.).

Agencies may also include additional requirements in their written agreements. Examples of written agreements used by some agencies that conform to the above requirements will be available on the OMB Web site.[86]

[FR Doc. E7–11542 Filed 6–14–07; 8:45 am]

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[86] *http://www.whitehouse.gov/omb go to ''Statistical Programs and Standards.''*

Federal Register

Friday,
June 15, 2007

Part V

The President

Notice of June 14, 2007—Continuation of the National Emergency Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus

Federal Register
Vol. 72, No. 115
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Presidential Documents

Title 3—

The President

Notice of June 14, 2007

Continuation of the National Emergency Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus

On June 16, 2006, by Executive Order 13405, I declared a national emergency and ordered related measures blocking the property of certain persons undermining democratic processes or institutions in Belarus, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action in response to the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons that have undermined democratic processes or institutions; committed human rights abuses related to political repression, including detentions and disappearances; and engaged in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

Because these actions and policies continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2007. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
June 14, 2007.

[FR Doc. 07–3005
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Ocean City Maryland Offshore Challenge; published 5-31-07

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 414/P.L. 110–29

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the ''Miguel Angel García Méndez Post Office Building''. (June 1, 2007; 121 Stat. 219)

H.R. 437/P.L. 110–30

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the ''Lino Perez, Jr. Post Office''. (June 1, 2007; 121 Stat. 220)

H.R. 625/P.L. 110–31

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the ''Atanacio Haro-Marin Post Office''. (June 1, 2007; 121 Stat. 221)

H.R. 1402/P.L. 110–32

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the ''Sergeant Dennis J. Flanagan Lecanto Post Office Building''. (June 1, 2007; 121 Stat. 222)

H.R. 2080/P.L. 110–33

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

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